

MELMED LAW GROUP, P.C.

Jonathan Melmed (SBN 290218)

jm@melmedlaw.com

Laura M. Supanich (SBN 314805)

lms@melmedlaw.com

1801 Century Park East, Suite 850

Los Angeles, California 90067

Telephone: (310) 824-3828

Facsimile: (310) 862-6851

Attorneys for Plaintiff, the Putative Class, and the Aggrieved Employees

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

JUSTINA BALDERRAMA, an individual,
on behalf of herself, the State of California,
as a private attorney general, and on behalf
of all others similarly situated,

Plaintiff,

v.

OMNI ENTERPRISES, INC., a California
Corporation; and DOES 1 TO 50,

Defendants.

Case No. 30-2022-01256174-CU-OE-CXC

**DECLARATION OF JONATHAN MELMED IN
SUPPORT OF PLAINTIFF'S MOTION FOR
ORDER GRANTING PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

Date: March 20, 2025

Time: 2:00 P.M.

Dept: CX104

Judge: Hon. Melissa R. McCormick

Complaint Filed: April 22, 2022

First Amended Complaint Filed: July 19, 2022

Trial Date: None Set

1 I, Jonathan Melmed declare as follows:

2 1. I am an attorney licensed to practice law before this Court and the federal and state courts
3 of California. I am over 18 years of age. I have personal knowledge of the facts set forth in this
4 declaration and if called upon to testify, could and would testify competently thereto.

5 2. I am a founding shareholder in the law firm of Melmed Law Group P.C. My office
6 (“Class Counsel”) is attorney of record for Plaintiff Justina Balderrama (“Plaintiff” or “Class
7 Representative”) and the proposed settlement class (the “Class”) in the above-captioned matter.

8 *The Parties and the Putative Class*

9 3. After engaging in substantial independent investigation, a full-day mediation session
10 before experienced wage and hour mediator Louis Marlin, and hard-fought negotiations, Plaintiff and
11 defendant Omni Enterprises, Inc. (“Defendant”) (collectively, the “Parties”) have entered into a
12 Settlement Agreement and Release of Class Action (the “Settlement Agreement”) resolving the claims
13 of the putative Class. The Settlement Agreement seeks to fully release and discharge Defendant from the
14 claims brought against it in this matter. The Settlement Agreement contemplates a non-reversionary
15 Gross Settlement Amount of \$325,000.00 (“Gross Settlement Amount”) to the Settlement Class of 287
16 individuals who are or were non-exempt employees who worked for Defendant in the State of California
17 from April 22, 2018, through May 13, 2024. The Gross Settlement Amount is inclusive of individual
18 settlement amounts to settlement class members, attorneys’ fees and costs, settlement administrative
19 expenses, and the Class Representative Payment to the named Plaintiff to be approved by the Court. A
20 true and correct copy of the Settlement Agreement is attached hereto as **Exhibit A**. The proposed Class
21 Notice and the Share Form are attached as **Exhibits 1 and 2**, respectively, to the Settlement Agreement.
22 The Settlement Agreement, in its entirety, is incorporated herein by reference.

23 4. I have no knowledge of the existence of any conflicting interests between my firm and
24 any of its attorneys, on the one hand, and Plaintiff or any other Class Member, on the other.

25 5. Plaintiff Justina Balderrama was employed with Defendant as an hourly paid, non-
26 exempt employee.

27 6. Plaintiff now seeks preliminary approval of this settlement for the following Settlement
28

1 Class defined as: *all individuals who are or were employed by Defendant(s) as non-exempt employees in*
2 *California during the Class Period.* (“Class” or “Settlement Class”).

3 7. According to information supplied by defense counsel, the putative Class here consists of
4 287 Class Members.

5 *Procedural History, Discovery, and Mediation*

6 8. On April 22, 2022, Plaintiff gave notice to the LWDA and Defendant of her claims for
7 Defendant’s violations of Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 256, 510,
8 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199 and the IWC Wage Order No. 5 under
9 the Private Attorney General Act (“PAGA”). A true and correct copy of the PAGA notice is attached
10 herein as **Exhibit B**.

11 9. On April 22, 2022, Plaintiff filed her class action complaint against Defendant alleging
12 causes of action for: (1) failure to pay all minimum wages; (2) failure to pay all overtime wages;
13 (3) failure to provide rest periods and pay missed rest period premiums; (4) failure to provide meal
14 periods and pay missed meal period premiums; (5) failure to maintain accurate employment records; (6)
15 failure to pay wages timely during employment; (7) failure to pay all wages earned and unpaid at
16 separation; (8) failure to furnish accurate itemized wage statements; and (9) violations of California’s
17 Unfair Competition Law.

18 10. On July 19, 2022, Plaintiff filed a First Amended Complaint adding an additional cause
19 of action for PAGA penalties based on the foregoing.

20 11. Plaintiff’s counsel, Melmed Law Group, P.C. (“Class Counsel”) has conducted sufficient
21 informal discovery, investigation, and exercised due diligence in the prosecution of the Action. This
22 informal discovery, investigation, and prosecution has included, among other things, (a) numerous
23 telephonic conferences with Plaintiff; (b) inspection and analysis of documents and other information
24 produced by Plaintiff and/or Defendant; (c) analysis of the legal positions and defenses taken by
25 Defendant; (d) investigation into the viability of class treatment and representative nature of the claims
26 asserted in the Action; (e) analysis of potential class-wide damages, including information sufficient to
27 understand Defendant’s respective potential defenses to Plaintiff’s claims; (f) research of the applicable
28

1 law with respect to the claims asserted in the Complaint and the potential defenses thereto; and (g)
2 assembling and analyzing of data for calculating damages.

3 12. The Class Representative has vigorously prosecuted this case, and Defendant has
4 vigorously contested it. The Parties engaged in sufficient investigation and discovery to assess the
5 relative merits of the claims of the Class and of Defendant's defenses to them.

6 13. In consideration thereof, and in advance of sinking substantial costs into further contested
7 proceedings, the Parties attended private mediation before experienced employment law neutral Louis
8 Marlin on February 13, 2024. During mediation, the Parties exchanged further information and
9 discussed all aspects of the case, including the risks and delays posed by additional litigation, the risks to
10 both Parties for proceeding with a motion for class certification, along with the evolving legal landscape
11 and evidentiary challenges to establishing respective claims and defenses. These were contentious issues
12 because of the factual and legal complexity of the case. *Id.* However, the Parties did reach a settlement
13 at mediation.

14 14. The settlement negotiations were hard-fought and conducted in good faith and at arm's
15 length between attorneys with substantial experience litigating class action and wage-and-hour cases.
16 The settlement was the product of a non-collusive settlement process in which the Parties were forced to
17 make significant compromises in the interest of reaching a full and complete settlement of the action.
18 The final settlement amount was reached as a result of reasonable compromises in light of these
19 considerations. The Parties entered into a long form Settlement Agreement which is now presented for
20 Court approval.

21 15. From Class Counsel's review of the facts, strengths, and weaknesses of the case, the risks
22 and delays posed by further litigation, and Class Counsel's own prior litigation experience, Class
23 Counsel believe that the recovery for each Settlement Class Member is fair and reasonable taking into
24 consideration the amounts received in other wage and hour class actions, the risks inherent in litigation
25 of this genre, and the reasonable tailoring of each Settlement Class Member's claims to the settlement
26 award he or she will receive.

27 16. To my knowledge, there are no other actions, whether in the pre-filing LWDA stage, or
28

pending in court, that may be affected by this settlement.

Summary of the Parties' Claims and Defenses

17. In the operative complaint, Plaintiff, individually and on behalf of the putative Class alleges causes of actions for: **(1)** failure to pay minimum wage (Labor Code §§ 1194, 1194.2, 1197); **(2)** failure to pay overtime wages (Labor Code §§ 510); **(3)** failure to provide rest periods and pay missed rest period premiums (Labor Code § 226.7; **(4)** failure to provide meal periods and pay missed meal period premiums (Labor Code §§ 226.7 and 512) **(5)** failure to maintain accurate employment records (Labor Code § 1174); **(6)** failure to pay wages timely during employment (Labor Code §§ 204 and 210) **(7)** failure to pay all wages earned and unpaid at separation (Labor Code §§ 201-203); **(8)** failure to provide complete and accurate wage statements (Labor Code § 226); **(9)** unfair business practices based on the foregoing (Business & Professions Code § 17200 *et seq.*); and **(10)** PAGA civil penalties based on the foregoing.

18. Labor Code sections 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code section 1194 entitles “any employee receiving less than the legal minimum wage...to recover in a civil action the unpaid balance of the full amount of this minimum wage.” The IWC Wage Order obligates employers to pay each employee minimum wages for all hours worked.

19. These minimum wage standards apply to each hour employees worked for which they were not paid. Therefore, an employer’s failure to pay for any particular hour of time worked by an employee is unlawful, even if averaging an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.

20. Here, Plaintiff alleged that she and the Class Members received daily assignments Defendant expected them to complete within an insufficient amount of time. Defendant’s unreasonable demands required Plaintiff and the Class Members to work off-the-clock without receiving at least minimum wage for each hour worked. Thus, Plaintiff and the Class Members were not paid at least

1 minimum wage for all hours suffered or permitted to work.

2 21. Plaintiff alleged that, because Defendant failed to provide Plaintiff and the Class
3 Members with compensation for all hours worked, each are entitled to recover liquidated damages under
4 Labor Code section 1194.2.

5 22. Labor Code section 510 states, “[e]ight hours of labor constitutes a day’s work. Any
6 work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek
7 and the first eight hours worked on the seventh day of work in any one workweek shall be compensated
8 at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in
9 excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of
10 pay for an employee.”

11 23. For the reasons stated above, Plaintiff alleged that she and the Class Members worked
12 certain hours for which they were not paid. Because Plaintiff and the Class Members spent eight hours
13 or more working on “compensated” time, this uncompensated time should have been compensated at the
14 overtime rate. Instead, no compensation was paid at all to Plaintiff and the Class Members.

15 24. Under California Labor Code section 512 and the IWC Wage Order, no employer shall
16 employ any person for a work period of more than five (5) hours without providing a meal period of not
17 less than thirty (30) minutes. During this meal period of not less than thirty (30) minutes, the employer is
18 to be completely free of the employer’s control and must not perform any work for the employer. If the
19 employee does perform work for the employer during the thirty (30) minute meal period, the employee
20 has not been provided a meal period in accordance with the law. Also, the employee is to be
21 compensated for any work performed during the thirty (30) minute meal period. Finally, an employer
22 may not employ an employee for a work period of more than ten (10) hours a day without providing the
23 employee with another meal period of not less than thirty (30) minutes.

24 25. Plaintiff alleged that, due to Plaintiff’s and the Class Members’ work schedules, they
25 were frequently not able to take compliant meal periods. Additionally, when Plaintiff and the Class
26 Members were provided meal periods, they were on-duty and therefore noncompliant. For example,
27 Defendant expected Plaintiff and the Class Members to continue working and finish their cleaning
28

1 assignments to meet their daily goals while clocked out for their meal periods.

2 26. In addition to failing to provide compliant meal periods, Plaintiff and the Class Members
3 were not compensated with one (1) hour's-worth of pay at their regular rate of compensation when they
4 were not provided with a compliant meal period in accordance with Labor Code section 226.7(b).

5 27. Pursuant to Labor Code section 226.7, and the applicable IWC Wage Order, Plaintiff
6 alleged that Defendant failed to provide Plaintiff and the Class members with compensated, duty-free
7 rest periods of not less than ten (10) minutes for every major fraction of four hours worked.

8 28. The IWC Wage Order states in pertinent part: "Every employer shall authorize and
9 permit all employees to take rest periods, which insofar as practicable shall be in the middle of each
10 work period. The authorized rest period time shall be based on the total hours worked daily at the rate of
11 ten (10) minutes net rest time per four (4) hours or major fraction thereof."

12 29. Here, Plaintiff alleged that Defendant failed to authorize or permit Plaintiff and the Class
13 Members to take duty-free rest periods of not less than ten (10) minutes for every major fraction of four
14 (4) hours worked. Specifically, due to the demands of the job, Plaintiff and the Class Members were
15 required to skip their rest periods entirely.

16 30. In addition to failing to authorize and permit compliant rest periods, Plaintiff and the Class
17 Members were not compensated with one (1) hour's-worth of pay at their regular rate of compensation
18 when they were not provided with a compliant rest period in accordance with Labor Code section
19 226.7(b).

20 31. Plaintiff alleged that, due to Defendant's failure to pay employees all minimum and
21 overtime wages for all hours worked, and for all meal and rest period premiums, the wage statements
22 issued by Defendant do not indicate the correct amounts of gross wages earned, the correct number of
23 hours worked, the correct net wages earned, or at the correct rate.

24 32. Labor Code section 226.3 provides that "[a]ny employer who violates subdivision (a) of
25 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
26 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each
27 violation in a subsequent citation, for which the employer fails to provide the employee a wage
28

1 deduction statement or fails to keep the required in subdivision (a) of Section 226.” Thus, for the
2 violations of Labor Code section 226 described above, Plaintiff and the other Class Members may also
3 recover Labor Code section 226.3 penalties for Defendant’s violations of Labor Code section 226(a).

4 33. Labor Code section 1174 states, “[e]very person employing labor in this state
5 shall...[k]eep, at a central location in the state or at the plants or establishments at which employers are
6 employed, payroll records showing the hours worked daily by and the wages paid to...employees
7 employed at the respective plants or establishments.”

8 34. The “Records” section of the applicable IWC Wage Order states that every employer
9 shall keep accurate information with respect to each one of its employees, including time records
10 showing when the employee begins and ends each work period and meal period, total hours worked in
11 the payroll period and applicable rates of pay, and total wages paid each payroll period.

12 35. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer’s failure to
13 maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per
14 pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a
15 violation of Labor Code section 1174(d).

16 36. As set forth above, Plaintiff alleged that Defendant violated these requirements by failing
17 to accurately record employee hours worked including, but not limited to, Defendant’s failure to record
18 each meal period taken, the applicable rates of pay, and the wages paid.

19 37. Sections 201-203 of the Labor Code provides that former employees must be paid all
20 wages due on termination of employment. If departing employees do not receive all wages due, then
21 they can recover penalties up to thirty days’ worth of wages against their former employer. Here,
22 Plaintiff alleged that, due to Defendant’s faulty policies described above, Plaintiff and the Class
23 Members whose employment with Defendant concluded were not compensated for each and every hour
24 worked or at the appropriate rate. Additionally, Defendant has failed to pay all Class Members for meal
25 and rest period premiums and all unpaid minimum and overtime wages, whose sums were certain, at the
26 time of termination or within seventy-two (72) hours of their resignation and have failed to pay those
27 sums for thirty (30) days thereafter.

1 38. Labor Code section 204 expressly requires employers who pay employees on a weekly,
2 biweekly, or semimonthly basis to pay all wages “not more than seven calendar days following the close
3 of the payroll period.” Plaintiff alleged that, due to Defendant’s failure to pay to Plaintiff and the Class
4 Members minimum wage and overtime compensation and meal and rest period premiums as described
5 above, Defendant failed to timely pay its employees within seven calendar days following the close of
6 payroll, in accordance with Labor Code section 204 on a regular and consistent basis. *See Parson v.*
7 *Golden State FC, LLC* (N.D. Cal. May 2, 2016) 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at
8 *3-5 (finding after *Ling vs. P.F. Chang’s China Bistro, Inc.* that a failure to pay rest period premiums
9 can support claims under Labor Code sections 203 and 204).

10 39. Plaintiff contended that by committing the above-described Labor Code violations,
11 Defendant engaged in unlawful, unfair, and/or fraudulent business practices in violation of California
12 Business and Professions Code sections 17200-17204 and is liable for restitution to the Plaintiff and the
13 Class. Moreover, this cause of action lengthens the statute of limitations of the Class’ claims to four
14 years preceding the filing of the Complaint.

15 40. The Private Attorney General Act of 2004 (“PAGA” - Labor Code §§ 2699-2699.5)
16 allows an aggrieved employee to bring suit against an employer for violations of most Labor Code
17 provisions. Suits brought under PAGA do not affect the employee’s right to recover other remedies
18 under state or federal law. *See* Labor Code § 2699(g); *Caliber Bodyworks, Inc. v. Superior Court*, 134
19 Cal. App. 4th 365, 375 (2005). Wherever the Labor Code gives the Labor and Workforce Development
20 Agency discretion to assess a civil penalty, a court is authorized to exercise the same discretion. Labor
21 Code § 2699(e)(1). The statute of limitations for PAGA suits is one year. An employee who prevails in
22 an action brought under PAGA is entitled to an award of reasonable attorney’s fees and costs. The
23 penalties available under PAGA are those provided in the underlying Labor Code provision that is
24 violated or, if no penalty is listed, those provided by PAGA itself. Where the Labor Code does not
25 provide for a penalty, PAGA establishes a civil penalty of \$100 for each aggrieved employee per pay
26 period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent
27 violation. Labor Code § 2699(f). For any civil penalties collected under PAGA, seventy-five percent of
28

1 the penalties are distributed to the LWDA for enforcement and education, and twenty-five percent is
2 distributed to the aggrieved employees.

3 41. Plaintiff alleged that by virtue of each of Defendant's foregoing Labor Code violations,
4 Plaintiff and the Class are, in addition to other remedies, entitled to civil penalties under PAGA. This
5 cause of action opens Defendant to additional penalties for the Labor Code violations, in additions to
6 attorneys' fees and costs.

7 42. Defendant denied and continues to deny generally the claims and contentions alleged in
8 the Complaint. Defendant also denies all material allegations in the Complaint.

9 43. **First**, Defendant argued that its main client is the jail system, and the jails require all
10 employees to take their meal and rest periods at the same time. Furthermore, Defendant argued that they
11 were compliant with all meal and rest period laws, and no employees are required work through meal
12 and/or rest periods to meet work demands. Thus, whether Class Members missed their meal or rest
13 periods would turn on individualized issues and therefore present significant difficulty in obtaining class
14 certification

15 44. **Second**, Defendant argued that PAGA penalties would be limited. Defendant argued that
16 even if Plaintiff prevailed, the recoverable penalties under PAGA are minimal. First, courts to consider
17 the issue have refused to "stack" PAGA penalties. *See Carrington v. Starbucks Corporation* (Cal. Ct.
18 App. Nov. 27, 2018) No. D072392 (published Dec. 19, 2018) (approving PAGA penalty reduction to \$5
19 per pay period); accord *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809. Moreover, Defendant argued
20 that Plaintiff is not entitled to recover PAGA penalties at the subsequent violation rate of \$200 per pay
21 period. California's appellate courts have held that "[u]ntil the employer has been notified that it is
22 violating a Labor Code provision (whether or not the commissioner or court chooses to impose
23 penalties), the employer cannot be presumed to be aware [of the violation]" and therefore, until a Court
24 or the Commissioner issues a finding of a violation, the initial \$100 violation rate applies for each pay
25 period in which the alleged violation occurred. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th
26 1157, 1209; accord *Amalgamated Transit Union Local 1309 v. Laidlaw Transit Service, Inc.* (S.D. Cal.
27 Aug. 10, 2009) 2009 WL 2448430, at *9 ("[u]nder California law, courts have held that employers are
28

not subject to heightened penalties for subsequent violations unless and until a court or commissioner notifies the employer that it is in violation of the Labor Code”). Thus, Defendant argued that even if the Plaintiff was able to establish any violation of the Labor Code, the PAGA penalties assessed for these violations will be computed at the \$100 rate, as opposed to the \$100 per pay period rate at maximum, and there is a likelihood that a further reduction of the penalty to \$5 per pay period as approved in *Carrington* would apply given Defendant’s compliance with the Labor Code as discussed above. Defendant further argued that even if Plaintiff was able to recover some PAGA penalties on behalf of other aggrieved employees, courts frequently use their discretion under Section 2699(e)(2) to significantly reduce PAGA penalties where such penalties would be unjust, arbitrary and improper. *See, e.g., Stuart v. RadioShack Corp.* (N.D. Cal. 2009) 641 F. Supp. 2d 901, 902–03; *Hernandez v. BCI Coca-Cola Bottling Co.* (C.D. Cal. Apr. 12, 2012) 2012 WL 12272348, at *2, *judgment entered*, 2012 WL 12092593 (C.D. Cal. May 9, 2012), and *aff’d*, 554 F. App’x 661 (9th Cir. 2014). Defendant maintains that given their good faith attempts to comply with the Labor Code, and *de minimis* defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find Defendant liable for any of Plaintiff’s claims. *Id.* *See also*, Labor Code §§ 203, 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties for wage statement violations from \$2,800,000 to \$500,000, because “the aggrieved employees suffered no injury” as a result of the violations, the defendants “were not aware” their wage statements violated the law, and the defendants “took prompt steps to correct all violations once notified.”); *Fleming v. Covidien, Inc.* (C.D. Cal. Aug. 12, 2011, No. (OPX)) 2011 WL 7563047, at *4 (reducing PAGA penalties from \$2.8 million to \$500,000).

45. **Third**, Defendant asserted that any violations of the Labor Code were unintentional, and that Plaintiff would have difficulty proving willfulness or intentionality for penalty purposes, including claims for civil penalties under PAGA and claims for waiting time penalties. Defendant further argued that Plaintiff would be unable to prove “injury” for purposes of recovering penalties under Labor Code 226(e).

46. In considering these significant risks and others, as well as the time, expense and cost of

litigation, trial and appeals, the Parties agreed that Settlement was appropriate, and that the Settlement here is fair and reasonable.

47. The estimated 287 Class Members will enjoy substantial monetary recovery amounting to an average recovery per class member of approximately \$554.59 net and an approximate minimum recovery of \$8.80 net.

Unpaid Minimum and Overtime Wages Due to Rounding

Plaintiff estimates 2.5 hours of unpaid time based on unlawful policies. When multiplied by the average minimum wage of \$13.50, this results in a maximum total underpayment of **\$610,605.00** (2.5 hours x \$13.50 x 18,092 workweeks).

However, as Class Members typically worked 8 hours per shift, this unpaid time often should be calculated at the overtime rate, resulting in absolute maximum damages of approximately **\$915,907.50** (assuming that every unpaid minute should have been paid at the overtime rate).

Rest Period Claims

Defendant arguably owed a rest period premium for 50% of each shift worked. Thus, Defendant's exposure for its failure to provide compliant rest periods is **\$610,605.00** (\$13.50 x 18,092 workweeks x 5 shifts x .5).

Meal Period Claims

Defendant arguably owed a rest period premium for 50% of each shift worked. Thus, Defendant's exposure for its failure to provide compliant rest periods is **\$610,605.00** (\$13.50 x 18,092 workweeks x 5 shifts x .5).

Wage Statement Penalties

There are 4,196 pay periods within the 1-year statute of limitations. Because 192 of these are initial (\$50 penalty for a total of \$9,600.00) and 4,004 are subsequent (\$100 penalty for a total of \$400,400.00), there is a grand absolute maximum total of **\$410,000.00**.

Failure to Timely Pay Wages

There are 4,196 pay periods during the statutory period. This results in total penalties of **\$820,000.00** (($\$100 \times 192 = \$19,200.00$) + ($\$200 \times 4,004 = \$800,800.00$)).

1 PAGA Penalties

2 Defendant identified 4,196 pay periods within the PAGA Period. Defendant's exposure for
3 PAGA penalties is *at least* \$100 * 4,196, which results in an absolute maximum PAGA exposure of
4 **\$419,600.00** per Labor Code violation (without stacking).

5 The Gross Settlement Amount

6 In coming to a determination that this settlement is fair and reasonable and in the best interests of
7 the Class, Plaintiff took the following factors into consideration: *First*, Plaintiff recognized that
8 certification of the meal and rest break claims may prove challenging given Defendant's defense that all
9 employees take meal and rest breaks at the same time, and all meal and rest periods are in compliance
10 with the law. Plaintiff ascribed a realistic settlement value of these claims at 50% of the maximum value
11 given the risks of (1) not certifying the class, and (2) not being able to establish (if the class is certified)
12 damages on a classwide basis. *Second*, Plaintiff took into account the risk that Defendant would
13 implement a *Pick Up Stix* strategy, whereby it would enter into individual settlement agreements with
14 each of the Class Members. Given that there are only 287 putative Class Members, Plaintiff had to take
15 this very real risk into account. *Third*, Plaintiff took into account that this Court may not find the
16 requisite willfulness to award penalties, and that this Court may exercise its discretion to reduce (or
17 perhaps not award any) PAGA penalties.

18 Defendant also asserted that any violations of the Labor Code were unintentional, and that
19 Plaintiff would have difficulty proving willfulness or intentionality for penalty purposes, including
20 claims for civil penalties under PAGA and claims for waiting time penalties. Defendant further argued
21 that Plaintiff would be unable to prove "injury" for purposes of recovering penalties under Labor Code
22 226(e).

23 If Defendant prevailed on any of these defenses, the Claims of the Class would be worth **nothing**
24 or substantially less. Thus, given the total potential recovery, and the risks involved, a settlement of
25 \$325,000.00, is an excellent one. Further, the recovery for the Settlement is an immediate one, whereas
26 litigation and appeals could result in years of litigation without any recovery to the Class.

1 48. I believe that the causes of action, allegations, and contentions asserted in the Action
2 have merit, and that there was significant possibility of certifying the claims as a class action. However,
3 I also recognize and acknowledge the expense and delay of continued lengthy proceedings necessary to
4 prosecute the Action against Defendant through class certification, summary judgment trial, and through
5 appeals. Moreover, I have taken into account the uncertain outcome and the risk of any litigation, the
6 risk of continued litigation in complex actions such as this, as well as the difficulties and delays inherent
7 in such litigation, the potential risks of not obtaining certification of the Action as a Class Action, and
8 the risk of no recovery as well as ongoing, substantial additional expenditures of time and resources. If
9 settlement were not achieved, continued litigation of the claims would take substantial time and possibly
10 confer no benefit on Class Members. By contrast, the settlement will yield a prompt, certain, and
11 substantial recovery for Class Members, which also benefits the parties and the Court. I was also very
12 mindful of Defendant's numerous factual and legal defenses to the claims alleged and the very real risk
13 of legislative retroactive preemption.

14 49. In coming to an evaluation of a reasonable settlement, I needed to take into account the
15 possibility of unfavorable decisions on class certification, summary judgment, at trial and/or on the
16 damages awarded, and/or on an appeal that would all take several more years to litigate, the risk of
17 Plaintiff not prevailing on one or more of the underlying claims due to factors such as Defendant's
18 ability to distinguish this case from existing cases, the risk that a court may not award waiting time
19 penalties based on difficulties in establishing bad faith, and the transaction costs and time of litigation.

20 50. Class Counsel believes that the Settlement confers substantial benefits upon the Class
21 Participants and each of the members of the Class, and that an independent review of the Settlement
22 Agreement by the Court in the approval process will confirm this conclusion. Based on their own
23 independent investigation and evaluation, Class Counsel has determined that the Settlement set forth in
24 the Settlement Agreement is fair and reasonable and is in the best interests of the members of the Class.

25 51. The settlement was the product of extensive arm's length negotiations, which took place
26 prior to, and during, an all-day mediation before renowned wage and hour mediator Louis Marlin.
27 Though cordial and professional, the settlement negotiation was adversarial and non-collusive in nature.
28

1 The settlement reached is the product of substantial effort by the parties and their counsel. Although
2 Plaintiff and her counsel believed that there was a possibility of certifying the claims, they recognized
3 the potential risk, expense, and complexity posed by litigation, such as unfavorable decisions on class
4 certification, summary judgment, at trial and/or on the damages awarded, and/or on an appeal that can
5 take several more years to litigate.

6 52. The resulting settlement was based on calculations, risk assessment, and non-collusive
7 negotiation. The resulting settlement takes those risks and others into account in arriving at the non-
8 reversionary gross settlement amount of \$325,000.00.

9 53. I thoroughly investigated and evaluated the factual and legal strengths and weaknesses of
10 this case before reaching the settlement. As described above, the settlement was reached after extensive
11 investigation and research, thorough calculations and risk evaluation, substantial exchanges of
12 documents, a thorough evaluation of data for the Class, and an exchange of information required to
13 evaluate Defendant's defenses. The settlement came only after the case was thoroughly investigated by
14 Plaintiff's counsel.

15 54. The estimated 287 Class Members will enjoy substantial monetary recovery amounting to
16 an average recovery per class member of approximately \$526.19 net and an approximate maximum
17 recovery of \$2,455.56 net.

18 55. The tax allocation of 20% wages and 80% penalties is appropriate for the following
19 reasons: (1) Defendant presented strong defenses to Plaintiff's wage claims, including that all employees
20 took their meal and rest periods at the same time, and the meal and rest periods were in compliance with
21 the law; (2) Plaintiff's stronger claims where Defendant did not provide as strong of defenses were those
22 for inaccurate itemized wage statements and waiting time penalties. The remedies under these statutes
23 provide for penalties rather than wages, and would result in significant recovery of penalties if the case
24 were to proceed. Thus, a tax allocation of 20% wages and 80% penalties is appropriate.

25 *Plaintiff's Counsel Is Experienced in Wage-And-Hour Litigation, Including Numerous Class Actions*

26 56. Throughout my career, I have gained significant experience regarding the obligations and
27 burdens of representing a class. This knowledge has allowed me and my firm, Melmed Law Group P.C.,
28

1 to successfully represent plaintiffs in many class actions in the past years. As noted, numerous state and
2 federal courts in California have found that my firm is competent and capable of representing as Class
3 Counsel large classes similar to the one here at issue.

4 57. In 2007, I received a B.A. from New York University, in New York, New York. In 2012,
5 I received a J.D. from Loyola Law School, Los Angeles. I became a member of the Bar of the State of
6 California in June 2013.

7 58. From 2012 through 2014, I was an associate attorney at Von Behren & Hunter, LLP
8 (“VBH”) in Manhattan Beach, California. At VBH, I litigated complex commercial litigation matters
9 where I represented life and health insurers in bad faith, ERISA, breach of contract and related disputes.
10 At VBH, I also represented and assisted in the representation of hotels, restaurants and real estate
11 development groups in state and federal commercial litigation, including class action cases (*see, i.e.*
12 *Daniel Flannery v. McCormick & Schmicks Seafood Restaurants*, Los Angeles County Superior Court,
13 Case No. BC487942).

14 59. From February 2015 through the present, I have been a founding and managing
15 shareholder in the firm of Melmed Law Group P.C. where I represented and continue to represent
16 thousands of employees in wage and hour class actions, and other employment-related matters. Melmed
17 Law Group P.C. has extensive experience in the litigation of complex cases, including California-wide
18 class actions. I am also an active member of the plaintiff’s employment bar association called the
19 California Employment Lawyers Association (“CELA”).

20 60. In addition to the instant case, I have served as class counsel in a variety of wage and
21 hour class actions. I, along with my co-counsel, have developed extensive litigation experience in
22 complex employment litigation matters, particularly in California class actions representing employees.
23 A list of class and PAGA approvals is attached herein as **Exhibit C**.

24 *The Attorneys’ Fees Allocation is Reasonable*

25 61. Plaintiff also requests that the Court preliminarily approve an award of reasonable
26 attorneys’ fees amounting to \$108,333.33. The attorneys’ fee award of 1/3 of the settlement fund is
27 reasonable considering the experience of Class Counsel in employment law class actions, the legal
28

1 expertise required to litigate this case and negotiate this Settlement, and the significant amount of actual
2 lodestar time that Class Counsel has dedicated to this case. The attorneys' fees sought are comparable to
3 attorneys' fee awards granted in similar cases, and, moreover, represent only a fraction of the market
4 value of services rendered by Class Counsel on behalf of the Class to date. Significantly, the Retainer
5 Agreement in this case provides fees up to one-third of the amount obtained.

6 62. If the Court grants preliminary approval to the settlement and authorizes the
7 dissemination of notice of the settlement to the class, Class Counsel anticipates filing a Motion for
8 Attorneys' Fees, Costs, and Incentive Award that will be scheduled to be heard concurrently (or will be
9 part of) the Motion for Final Approval and Fairness Hearing. In connection with the filing of the Motion
10 for Attorneys' Fees and Costs, Class Counsel will submit updated information in the form of a sworn
11 declaration setting forth a summary of their lodestar hours on this case, as well all of their actual costs
12 incurred in this case.

13 *The Class Representative Incentive Award is Fair and Appropriate*

14 63. Plaintiff requests payment of an Incentive Award from the non-reversionary Gross
15 Settlement Amount to the Class Representative in the amount of \$7,500.00, in addition to whatever
16 payments she is otherwise entitled to receive as a Class Member. The proposed Incentive Award is
17 reasonable compensation given the time and effort that the named Plaintiff devoted to this case and the
18 valuable assistance she provided to Class Counsel.

19 64. Plaintiff provided invaluable assistance to Class Counsel and the Class in this case,
20 including providing factual background for mediation and the Complaint; reviewing the relevant
21 documents and Complaint; participating in phone calls with Class Counsel; attending a full-day
22 mediation by phone; and reviewing the settlement documents. Plaintiff agreed to participate in this case
23 with no guarantee of personal benefit.

24 65. Further, Plaintiff agreed to undertake the financial risk of serving as Class Representative
25 and exposed herself to the reputational risk of filing this lawsuit. Moreover, the requested \$7,500.00
26 Incentive Award for the Class Representative falls within the range of incentive payments typically
27 awarded to Class Representative in similar class actions. *See e.g. Bond v. Ferguson Enterprises, Inc.*,
28

No. 1:09-cv-1662 OWW MJS, 2011 WL 2648879 (E.D. Cal. June 30, 2011) (approving \$11,250 service award to each of the two class representatives in a trucker meal break class action; *Ross v. US Bank National Association*, No. C 07-02951 SI, 2010 WL 3833922, at *2 (N.D. Cal. Sept. 29, 2010) (approving \$20,000 enhancement award to Class Representative in California wage-and-hour class action settlement); *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 493 (E.D. Cal. 2010) (approving service awards in the amount of \$10,000 each from a \$300,000 settlement fund in a wage/hour class action); *West v. Circle K Stores, Inc.*, NO. CIV. S-04-0438 WBS GGH, 2006 U.S. Dist. LEXIS 76558, at *28 (E.D. Cal. Ct. 19, 2006) (“the court finds plaintiffs' enhancement payments of \$ 15,000 each to be reasonable.”); *Glass v. UBS Fin. Servs.*, No. C-06-4068 MMC, 2007 U.S. Dist. LEXIS 8476, at *52 (N.D. Cal. Jan. 26, 2007) (finding “requested payment of \$ 25,000 to each of the named plaintiffs is appropriate” in wage and hour settlement); *Louie v. Kaiser Found. Health Plan, Inc.*, Case No. 08cv0795 IEG RBB, 2008 U.S. Dist. LEXIS 78314, at *18 (S.D. Cal. Ct. 6, 2008) (approving “\$25,000 incentive award for each Class Representative” in wage an hour settlement); *Garner v. State Farm Mut. Auto. Ins. Co.*, Case No. CV 08 1365 CW (EMC), 2010 WL 1687832, at *17 n.8 (N.D. Cal. Apr. 22, 2010) (“Numerous courts in the Ninth Circuit and elsewhere have approved incentive awards of \$20,000 or more where, as here, the class representative has demonstrated a strong commitment to the class”).

66. The parties propose that the Court appoint ILYM Group, Inc. to serve as the Settlement Administrator. ILYM Group, Inc. is experienced in administering class action settlements. A true and correct copy of the bid from ILYM Group, Inc. is attached hereto as **Exhibit D**.

67. Plaintiff provided notice of this Settlement, a copy of the Settlement Agreement, and the accompanying approval papers to the LWDA on November 5, 2024. A true and correct copy of the confirmation of submission is attached hereto as **Exhibit E**.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Executed on November 6, 2024 in Los Angeles, California.

1
2 By: 
3 Jonathan Melmed, Esq.
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit A

MELMED LAW GROUP P.C.

Jonathan Melmed (SBN 290218)

jm@melmedlaw.com

Laura Supanich (SBN 314805)

lms@melmedlaw.com

Michiko Vartanian (SBN 323979)

mv@melmedlaw.com

1801 Century Park East, Suite 850

Los Angeles, California 90067

Phone: (310) 824-3828

Fax: (310) 862-6851

Attorneys for Plaintiff, the Putative Class, and the Aggrieved Employees

Additional Counsel Listed on Next Page

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

JUSTINA BALDERRAMA, an individual, on
behalf of herself, the State of California, as a
private attorney general, and on behalf of all
others similarly situated,

Plaintiff,

v.

OMNI ENTERPRISES, INC., a California
Corporation; and DOES 1 TO 50,

Defendants.

Case No.: 30-2022-01256174-CU-OE-CXC

**Settlement Agreement and Release of Class
Action**

Darius G. Adli, Esq., SBN 204959
Adli@Adlilaw.Com
Jamie Wright, Esq., SBN 264484
Jamie.Wright@Adlilaw.Com
ADLI LAW GROUP, P.C.
12400 Wilshire Blvd., Suite 1460
Los Angeles, California 90025
Telephone: (213) 623-6546
Facsimile: (213) 623-6554

Attorneys for Defendant Omni Enterprises, Inc.

SETTLEMENT AGREEMENT AND RELEASE OF CLASS ACTION

This Settlement Agreement and Release of Class Action (“Settlement Agreement”) is made and entered into by: **(1)** Plaintiff Justina Balderrama (“Plaintiff”), individually and in her representative capacity on behalf of the Settlement Class, as defined below, and as a private attorney general on behalf of the State of California; and **(2)** Defendant Omni Enterprises, Inc. (“Defendant”). Plaintiff and Defendant are collectively referred to herein as the “Parties.” This Settlement Agreement is subject to the approval of the Court, pursuant to California Rules of Court, rule 3.769, subdivisions (c), (d), and (e), and is made for the sole purpose of attempting to consummate settlement of the action on a class-wide basis subject to the following terms and conditions. As detailed below, if the Court does not enter an order granting final approval of this Settlement Agreement or the conditions precedent are not met for any reason, this Settlement Agreement is void and of no force or effect whatsoever.

1. DEFINITIONS

As used in this Settlement Agreement, the following terms shall have the meanings specified below. To the extent terms or phrases used in this Settlement Agreement are not specifically defined below, but are defined elsewhere in this Settlement Agreement, they are incorporated by reference into this definition section.

1.1. ACTION

“Action” shall mean the following civil action: *Justina Balderrama v. Omni Enterprises, Inc.*, case number 30-2022-01256174-CU-OE-CXC, currently pending before the Superior Court of the State of California for the County of Orange.

1.2. ADMINISTRATIVE EXPENSE PAYMENT

“Administrative Expenses” shall include all costs and expenses associated with and paid to the third-party settlement administrator, which are estimated not to exceed \$15,000.00.

1.3. APPLICABLE WAGE ORDER

“Applicable Wage Order” shall mean the California Industrial Welfare Commission (“IWC”) Wage Order applicable to the facts of this case, including IWC Wage Order 5-2001 and others that may be applicable. (Cal. Code of Regs., tit. 8, § 11050.)

1 **1.4. CLAIMS**

2 “Claims” shall mean the claims asserted in the Action.

3 **1.5. CLASS ATTORNEY FEES AND EXPENSES**

4 “Class Attorney Fees and Expenses” shall mean the portion of the Gross Settlement Amount
5 attributable to attorney fees and litigation expenses. The Parties agree that the fee-portion of the Class
6 Attorney Fees and Expenses shall be up to one-third of the Gross Settlement Amount (i.e.,
7 \$108,333.33), as approved by the Court, and the award of costs and expenses shall be up to an
8 additional \$20,000.00. If the Escalator Provision described below is triggered so as to increase the
9 Gross Settlement Amount, the Parties agree that the fee portion of the Class Attorney Fees and
10 Expenses will increase proportionally such that the total amount of attorneys’ fees remains one-third
11 of the Gross Settlement Amount *after* the upward adjustment required by the Escalator Provision is
12 implemented.

13 **1.6. CLASS COUNSEL**

14 “Class Counsel” shall mean Jonathan Melmed, Laura Supanich, and Michiko Vartanian of
15 Melmed Law Group P.C.

16 **1.7. CLASS MEMBER**

17 “Class Member” shall mean any person who is a prospective member of the Settlement Class,
18 or, if such person is incompetent or deceased, the person’s legal guardian, executor, heir, or successor-
19 in-interest.

20 **1.8. CLASS NOTICE**

21 “Class Notice” shall mean the *Notice of Proposed Class Action Settlement*, as set forth in the
22 form of **Exhibit 1** attached hereto, or as otherwise approved by the Court, which is to be mailed to
23 Class Members along with the Share Form.

24 **1.9. CLASS PARTICIPANTS**

25 “Class Participants” shall mean all Class Members who do not timely request exclusion from
26 the Class Settlement.

1.10. CLASS PERIOD

“Class Period” shall mean the period from April 22, 2018, through the earliest of 90 days after the date of mediation or the date of preliminary approval of the settlement.

1.11. CLASS REPRESENTATIVE

“Class Representative” shall mean Plaintiff Justina Balderrama.

1.12. CLASS SETTLEMENT

“Class Settlement” shall mean the settlement embodied in this Settlement Agreement, which is subject to Court approval.

1.13. COMPLAINT

“Complaint” shall mean the currently-operative complaint in the Action.

1.14. COURT

“Court” shall mean the Superior Court of the State of California for the County of Orange.

1.15. DEFENDANT

“Defendant” shall mean Defendant Omni Enterprises, Inc.

1.16. DEFENSE COUNSEL

“Defense Counsel” shall mean the attorneys representing Defendant.

1.17. EFFECTIVE DATE

“Effective Date” shall be the date when all of the following events have occurred: **(a)** this Settlement Agreement has been executed by all Parties and by Class Counsel and Defense Counsel; **(b)** the Court has given preliminary approval to the Class Settlement; **(c)** notice has been given to the Settlement Class providing them with an opportunity to request exclusion from the Class Settlement; **(d)** the Court has held a Final Approval and Fairness Hearing and entered a final order and judgment certifying the Settlement Class and approving this Settlement Agreement; and **(e)** the later of the following events: **(i)** the expiration of the period for filing any appeal, writ, or other appellate proceeding opposing the Class Settlement has elapsed without any appeal, writ, or other appellate proceeding having been filed; **(ii)** the dismissal of any appeal, writ, or other appellate proceeding opposing the Class Settlement with no right to pursue further remedies or relief; or **(iii)** any appeal, writ, or the issuance of such other final appellate order upholding the Court’s final order with no right

1 to pursue further remedies or relief. In this regard, it is the intention of the Parties that the Class
2 Settlement shall not become effective until the Court's order approving the Class Settlement is
3 completely final and there is no further recourse by an appellant or objector who seeks to contest the
4 Class Settlement. If no objections are filed, the Effective Date shall be after steps (a) through (d) are
5 completed (i.e., the date that the court has entered a final order and judgment certifying the Settlement
6 Class and approving this Settlement Agreement).

7 **1.18. EMPLOYEE'S TAXES AND REQUIRED WITHHOLDING**

8 "Employee's Taxes and Required Withholding" shall mean the employee's share of any and all
9 applicable federal, state, or local payroll taxes, including those collected under authority of the Federal
10 Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and/or the State
11 Unemployment Tax Act (SUTA) on the portion of any Class Participant's Individual Settlement
12 Amount that constitutes wages. The Employee's Taxes and Required Withholdings will be withheld
13 from and paid out of the Individual Settlement Amounts paid from the Net Settlement Amount.

14 **1.19. EMPLOYER'S TAXES**

15 "Employer's Taxes" shall mean and refer to Defendant's share of payroll taxes (e.g.,
16 Unemployment Insurance, Employment Training Tax, Social Security, and Medicare taxes) that is
17 owed on the portion of any Class Participant's Individual Settlement Amount that constitutes wages.
18 The Employer's Taxes shall be separately paid by Defendant and shall not be paid from the Gross
19 Settlement Amount or Net Settlement Amount.

20 **1.20. FINAL APPROVAL AND FAIRNESS HEARING**

21 "Final Approval and Fairness Hearing" shall mean the final hearing held to ascertain the
22 fairness, reasonableness, and adequacy of the Class Settlement.

23 **1.21. FINAL JUDGMENT**

24 "Final Judgment" shall mean the judgment entered by the Court upon granting final approval
25 of this Settlement Agreement.

26 **1.22. GROSS SETTLEMENT AMOUNT**

27 "Gross Settlement Amount" is the agreed upon non-reversionary settlement amount totaling
28 \$325,000.00 to be paid by Defendant in full settlement of the Released Claims asserted in this case,

1 inclusive of the Administrative Expenses, the Employee's Taxes and Required Withholdings, the Class
2 Attorney Fees and Expenses, the Incentive Award (i.e. the Class Representative Service Payment), and
3 PAGA Payment. Defendant shall separately pay its share of the Employer's Taxes in addition to the
4 Gross Settlement Amount on the portion of each Individual Settlement Amount allocated as wages.

5 **1.23. HEARING ON PRELIMINARY APPROVAL**

6 "Hearing on Preliminary Approval" shall mean the hearing held on the motion for preliminary
7 approval of the Class Settlement.

8 **1.24. INCENTIVE AWARD**

9 "Incentive Award" shall mean any additional monetary payment provided to the Class
10 Representative for her efforts and risks on behalf of the Settlement Class in this Action.

11 **1.25. INDIVIDUAL SETTLEMENT AMOUNT**

12 "Individual Settlement Amount" shall mean the amount which is ultimately distributed to each
13 Class Participant, less any Employee's Taxes and Required Withholdings. The Individual Settlement
14 Amount does not include any portion of the PAGA Payment.

15 **1.26. LWDA**

16 "LWDA" shall mean the California Labor and Workforce Development agency, the agency
17 entitled under Labor Code sections 2699.

18 **1.27. NET SETTLEMENT AMOUNT**

19 "Net Settlement Amount" shall mean the Gross Settlement Amount minus: Administrative
20 Expenses; Class Attorney Fees and Expenses; 75% of the share of the Gross Settlement Amount
21 allocated toward penalties pursuant to the Labor Code Private Attorney General Act of 2004
22 ("PAGA"), codified at Labor Code sections 2698 through 2699.6, which are payable to the California
23 LWDA; and Plaintiff's Incentive Award.

24 **1.28. OPT OUT**

25 "Opt Out" shall refer to the process of submitting a timely and valid request for exclusion from
26 the Class Settlement in accordance with the terms of the Class Notice and no later than the Response
27 Deadline.
28

1.29. OPT-OUTS

“Opt-Outs” shall mean all persons who timely and validly request exclusion from the Class Settlement in accordance with the terms of the Class Notice and no later than the Response Deadline.

1.30. PAGA PAYMENT

“PAGA Payment” means the penalties pursuant to PAGA that the Parties have agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which is \$20,000.00. The PAGA Payment is to be approved by the Court pursuant to Labor Code section 2699 and is to be distributed as follows: seventy-five percent (75%) (i.e., \$15,000.00) to the LWDA and twenty-five percent (25%) (i.e., \$5,000.00) to the PAGA Settlement Class. Class Counsel shall give timely notice of this Settlement Agreement to the LWDA pursuant to Labor Code section 2699, subdivision (l)(2).

1.31. PAGA PERIOD

“PAGA Period” shall mean the period from April 22, 2021, through the earliest of 90 days after the date of mediation or the date of preliminary approval of the settlement.

1.32. PAGA RELEASED CLAIMS

“PAGA Released Claims” shall mean any and all claims that are pled in the Action under PAGA, or which could have been pursued in the Action under PAGA, based on the factual allegations in the Action alleged in the Complaint, including but not limited to: failure to pay minimum wages for all hours worked, failure to pay overtime wages, failure to provide paid rest breaks and pay missed rest break premiums, failure to provide meal periods and pay missed meal period premiums, failure to pay wages timely during employment, failure to pay timely wages at separation, failure to provide accurate and itemized wage statements, failure to pay sick leave, and recordkeeping violations, pursuant to Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 256, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199.

1.33. PAGA SETTLEMENT CLASS

“PAGA Settlement Class” shall mean all individuals who are or were employed by Defendants as non-exempt employees in California during the PAGA Period.

1 **1.34. PARTIES**

2 “Parties” shall mean Plaintiff and Defendant.

3 **1.35. PLAINTIFF**

4 “Plaintiff” shall mean Plaintiff Justina Balderrama.

5 **1.36. PRELIMINARY APPROVAL DATE**

6 “Preliminary Approval Date” shall mean the date upon which the Court enters an order
7 preliminarily approving this Settlement Agreement.

8 **1.37. RELEASED CLAIMS**

9 “Released Claims” shall mean those claims arising out of or related to the allegations set forth
10 in the operative complaint and/or PAGA notice to the California Labor and Workforce Development
11 Agency that arose during the Class Period and/or PAGA Period, including claims for: **(1)** failure to pay
12 minimum wage for all hours worked in violation of Labor Code sections 1194 and 1194.2, and the
13 applicable IWC Wage Order(s); **(2)** failure to pay proper overtime wages in violation of Labor Code
14 sections 510, 1197, and 1198, and the applicable IWC Wage Order(s); **(3)** failure to provide compliant
15 rest periods and pay missed rest break premiums in violation of Labor Code section 226.7 and the
16 applicable IWC Wage Order(s); **(4)** failure to provide compliant meal periods and pay missed meal
17 period premiums in violation of Labor Code sections 226.7 and 512, and the applicable IWC Wage
18 Order(s); **(5)** failure to maintain accurate employment records in violation of Labor Code section 1174;
19 **(6)** failure to pay timely wages during employment in violation of Labor Code sections 204, 210;
20 **(7)** failure to pay all wages due and owing at separation in violation of Labor Code sections 201, 202,
21 and 203; **(8)** failure to provide complete and accurate wage statements in violation of Labor Code
22 sections 226 and 226.3; **(9)** deceptive, fraudulent, or otherwise unlawful business practices based on
23 the foregoing in violation of California’s Unfair Competition Law (Bus. & Prof. Code, §§ 17200–
24 17210); **(10)** statutory penalties based on the foregoing pursuant to PAGA (Lab. Code, §§ 2698-
25 2699.6); and **(11)** all claims for liquidated damages, penalties, interest, fees, costs based on the
26 foregoing.

27 No other claims are released other than those claims specifically plead in the Complaint or
28 otherwise specifically identified herein. This Settlement Agreement will not release any person, party,

or entity from claims, if any, by Class Members for workers compensation, unemployment, or disability benefits of any nature. Nor does it release any claims, actions, or causes of action which may be possessed by Class Members under state or federal discrimination statutes, including, without limitation, the California Fair Employment and Housing Act (Gov. Code, §§ 12900–12996); the Unruh Civil Rights Act (Civ. Code, § 51); the California Constitution; Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000, et seq.); the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.); the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1001 et seq.); and all of their implementing regulations and interpretive guidelines.

1.38. RELEASED PARTIES

“Released Parties” shall mean Defendant and all of Defendant and all of Defendant’s subsidiaries, affiliates, shareholders, members, agents, predecessors, successors, and assigns.

1.39. RELEASING PARTIES

“Releasing Parties” shall mean every Class Participant and all persons purporting to act on their behalf or purporting to assert a claim under or through them, including, but not limited to, their dependents, heirs, assigns, beneficiaries, devisees, legatees, executors, administrators, agents, trustees, conservators, guardians, personal representatives, and successors-in-interest, whether individual, class, representative, legal, equitable, direct or indirect, or any other type or in any other capacity.

1.40. RESPONSE DEADLINE

“Response Deadline” shall mean the date forty-five (45) days following the date on which the Settlement Administrator first mails Class Notice to the Class Members and the last day on which Class Members may submit a request for exclusion and/or objection to Class Settlement.

1.41. SETTLEMENT ADMINISTRATOR

“Settlement Administrator” shall mean ILYM Group, Inc. (or other administrator agreed on by the parties) which the Parties have agreed will be responsible for administration of the Class Settlement and related matters.

1.42. SETTLEMENT CLASS

“Settlement Class” shall mean all individuals who are or were employed by Defendants as non-exempt employees in California during the Class Period. Defendant represents that the Settlement Class

consists of approximately 287 Class Members that worked a total of approximately 18,092 workweeks during the Class Period.

1.43. SHARE FORM

“Share Form” shall mean the *Class Action Settlement Share Form*, as set forth in the form of **Exhibit 2** attached hereto, or as otherwise approved by the Court, which is to be mailed to Class Members along with the Class Notice.

2. FACTUAL AND PROCEDURAL BACKGROUND

2.1. PLAINTIFF’S CLAIMS

Plaintiff, individually and in her representative capacity on behalf of the Settlement Class, and as a private attorney general on behalf of the State of California, has alleged the following violations: **(1)** failure to pay minimum wage for all hours worked in violation of Labor Code sections 1194 and 1194.2, and the Applicable Wage Order; **(2)** failure to pay proper overtime wages in violation of Labor Code sections 510, 1197, and 1198, and the Applicable Wage Order; **(3)** failure to provide compliant rest periods and pay missed rest break premiums in violation of Labor Code section 226.7 and the Applicable Wage Order; **(4)** failure to provide compliant meal periods and pay missed meal period premiums in violation of Labor Code sections 226.7 and 512, and the Applicable Wage Order; **(5)** failure to maintain accurate employment records in violation of Labor Code section 1174; **(6)** failure to pay timely wages during employment in violation of Labor Code sections 204, 210; **(7)** failure to pay all wages due and owing at separation in violation of Labor Code sections 201, 202, and 203; **(8)** failure to provide complete and accurate wage statements in violation of Labor Code sections 226 and 226.3; **(9)** deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing in violation of California’s Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210); and **(10)** statutory penalties based on the foregoing pursuant to PAGA (Lab. Code, §§ 2698–2699.6).

2.2. DISCOVERY, INVESTIGATION, RESEARCH, AND MEDIATION

Class Counsel has conducted significant informal discovery during the prosecution of the Action. This discovery, investigation, and prosecution has included, among other things, **(a)** over a dozen telephonic conferences with Plaintiff; **(b)** inspection and analysis of hundreds of pages of

documents and other information produced by Plaintiff and Defendant; **(c)** analysis of employment data from a sample of Class Members; **(d)** an analysis of the legal positions taken by Defendant; **(d)** investigation into the viability of class treatment of the claims asserted in the Action; **(e)** analysis of potential class-wide damages, including information sufficient to understand Defendant's potential defenses to Plaintiff's claims; **(f)** research of the applicable law with respect to the claims asserted in the Complaint and the potential defenses thereto; and **(g)** assembling and analyzing of data for calculating damages.

Class Counsel and the Class Representative have vigorously prosecuted this case, and Defendant has vigorously contested it. The Parties have engaged in sufficient investigation and discovery to assess the relative merits of the claims of the Class Representative and of the defenses to them. After such discovery, investigation, and prosecution, the Parties attended a full-day mediation with an experienced employment law mediator, which culminated in a settlement in principle, the terms of which are elaborated in this Settlement Agreement.

2.3. ALLEGATIONS OF THE CLASS REPRESENTATIVE AND BENEFITS OF CLASS SETTLEMENT

The document and data exchange in this matter, as well as discussions between counsel, have been adequate to give the Class Representative and Class Counsel a sound understanding of the merits of their positions and to evaluate the value of the claims of the Settlement Class. The informal discovery conducted in this Action and the information exchanged by the Parties through pre-mediation discussions are sufficient to reliably assess the merits of the Parties' respective positions and to compromise the issues on a fair and equitable basis.

The Class Representative and Class Counsel believe that the claims, causes of action, allegations, and contentions asserted in the Action have merit. However, the Class Representative and Class Counsel recognize and acknowledge the expense and delay of continued lengthy proceedings necessary to prosecute the Action against Defendant through trial and through appeals. Class Counsel has taken into account the uncertain outcome of the litigation, the risk of continued litigation in complex actions such as this, as well as the difficulties and delays inherent in such litigation, and the potential difficulty of obtaining certification of the Settlement Class as well as trying the claims of the class.

1 Class Counsel is mindful of the potential problems of proof under, and possible defenses to, the claims
2 alleged in the Action.

3 The Class Representative and Class Counsel believe that the settlement set forth in this
4 Settlement Agreement confers substantial benefits upon Plaintiff and the Settlement Class and that an
5 independent review of this Settlement Agreement by the Court in the approval process will confirm
6 this conclusion. Based on their own independent investigation and evaluation, Class Counsel has
7 determined that the settlement set forth in this Settlement Agreement is in the best interests of Plaintiff
8 and the Class Members.

9 **2.4. DEFENDANT'S DENIALS OF WRONGDOING AND LIABILITY**

10 Defendant has denied and continues to deny all allegations, claims, and contentions alleged by
11 Plaintiff in the Action. Defendant has expressly denied and continues to deny all charges of wrongdoing
12 or liability against it arising out of any of the conduct, statements, acts, or omissions alleged in the
13 Action. Defendant contends that it complied with California and federal wage and hour laws and has
14 dealt legally and fairly with Plaintiff and the Class Members.

15 Defendant further denies that, for any purpose other than settling this Action, these claims are
16 appropriate for class or representative treatment. Nonetheless, Defendant has concluded that further
17 proceedings in the Action would be protracted and expensive and that it is desirable that the Action be
18 fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement
19 Agreement to dispose of burdensome and protracted litigation, to permit the operation of Defendant's
20 respective businesses without further expensive litigation and the distraction and diversion of their
21 personnel with respect to matters at issue in the Action. Defendant has also taken into account the
22 uncertainty and risks inherent in any litigation, especially in complex cases such as the Action.
23 Defendant has, therefore, determined that it is desirable and beneficial to it that the Action be settled
24 in the manner and upon the terms and conditions set forth in this Settlement Agreement.

25 **2.5. INTENT OF THE CLASS SETTLEMENT**

26 The Class Settlement set forth herein intends to achieve the following: **(1)** entry of an order
27 approving the Class Settlement; **(2)** entry of judgment of the Action; **(3)** discharge of the Released
28

1 Parties from liability for any and all of the Released Claims; and **(4)** discharge of Defendant from
2 liability for any and all claims arising out of the Action.

3 **3. CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS**

4 For the purposes of this Settlement Agreement and the Class Settlement of this Action only, the
5 Parties agree to conditional class certification of the Settlement Class. Defense Counsel believes this
6 conditional certification is appropriate because the Released Claims are being compromised without
7 need to establish the elements of those claims on which liability turns. The certification of the
8 Settlement Class shall not constitute, in this or any other proceeding, an admission of any kind by
9 Defendant, including without limitation, that certification of a class for trial purposes is or would be
10 warranted, appropriate or proper; or that Plaintiff could establish any of the requisite elements for class
11 treatment of any of the claims in the Action.

12 If the Settlement Agreement is not finally approved by the Court, the Effective Date is not
13 achieved, or the Class Settlement is rejected, terminated, or otherwise rendered null and void as set
14 forth herein, then certification of the Settlement Class shall be automatically vacated, shall be void *ab*
15 *initio*, of no force or effect, and shall not constitute evidence or a binding determination that the
16 requirements for certification of a class for trial purposes in this Action or in any other action which
17 have been, are or can be, satisfied. Further, if the Agreement does not reach the Effective Date, Plaintiff
18 agrees that Plaintiff will not argue, claim, reference, or otherwise raise any preliminary approval of the
19 Settlement Class in connection with any later proceeding before the Court.

20 **4. APPOINTMENT OF CLASS COUNSEL**

21 For purposes of this Settlement Agreement and subject to the Court's approval, the Parties agree
22 to the appointment of Class Counsel as counsel for the Settlement Class and the effectuation of the
23 Class Settlement pursuant to this Settlement Agreement.

24 **5. CONSIDERATION**

25 **5.1. SETTLEMENT AMOUNT**

26 The Parties agree to settle this Action for the Gross Settlement Amount of \$325,000.00. There
27 shall be no reversion to Defendant. Defendant shall pay the Gross Settlement Amount in full. The Gross
28 Settlement Amount and other actions and forbearances taken by Defendant shall constitute adequate

1 consideration for the Class Settlement and will be made in full and final settlement of: the Released
2 Claims, the Class Attorney Fees and Expenses, Administrative Expenses, the Incentive Award, the
3 PAGA Payment (and any payments to individual PAGA Class Members resulting from the PAGA
4 Payment), and any other obligation of Defendant under this Settlement Agreement (other than the
5 Employer's Taxes on the portion of the Net Settlement Amount allocated to the payment of wages).

6 After the Court issues an order preliminarily approving this Class Settlement, the Settlement
7 Administrator will distribute the Class Notice to the Class Members, which shall describe the terms of
8 the Class Settlement and procedures to Opt Out, object, or participate in the Class Settlement as well
9 as the Share Form, which shall identify the Class Member, the number of workweeks worked by each
10 Class Member ("Workweeks"), as well as the estimated amount of the Individual Settlement Amount
11 the Class Member can expect to receive once the Class Settlement becomes effective on the Effective
12 Date. Class Members shall be given the opportunity to challenge their Workweeks information.

13 **5.2. INCENTIVE AWARD FOR PLAINTIFF**

14 Plaintiff may petition the Court to approve an Incentive Award in an amount up to \$7,500.00
15 for Justina Balderrama to acknowledge her efforts on behalf of the Settlement Class in this Action,
16 including assisting in the investigation and consulting with Class Counsel and providing crucial
17 documents to Class Counsel. Defendant shall not oppose any request by Plaintiff for an Incentive
18 Award in such an amount. Any Incentive Award approved by the Court shall be paid to Plaintiff from
19 the Gross Settlement Amount and shall be in addition to any distribution to which she may otherwise
20 be entitled as a Class Participant. Any Incentive Award approved by the Court shall not be considered
21 wages, and the Settlement Administrator shall issue to Plaintiff an IRS Form 1099 reflecting such
22 payment. Plaintiff shall be responsible for the payment of all taxes with respect to any Incentive Award
23 approved by the Court and shall hold Defendant harmless from all liability with regard thereto.

24 **5.3. PAYMENT TO CLASS PARTICIPANTS**

25 Each Class Participant shall be eligible to receive payment of the Individual Settlement
26 Amount, which is a share of the Net Settlement Amount based on the pro rata number of weeks worked
27 by the Class Members during the Class Period as a proportion of all weeks worked by all Class
28 Members. Each Class Participant, including Plaintiff, shall be responsible for the payment of the

1 Employee's Taxes and Required Withholding with respect to his or her Individual Settlement Amount
2 and shall hold Defendant harmless from any and all liability with regard thereto.

3 **5.4. PAYMENT TO PAGA SETTLEMENT CLASS**

4 Each member of the PAGA Settlement Class shall be entitled to receive a portion of the PAGA
5 Payment. The PAGA Payment shall consist of the penalties pursuant to PAGA that the Parties have
6 agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which
7 is \$20,000.00. The PAGA Payment must be approved by the Court pursuant to Labor Code section
8 2699 and is to be distributed as follows: seventy-five percent (75%) (i.e., \$15,000.00) to the LWDA
9 and twenty-five percent (25%) (i.e., \$5,000.00) to the PAGA Settlement Class. The portion of the
10 PAGA Payment allocated to the PAGA Settlement Class shall be distributed to the PAGA Settlement
11 Class based on the pro rata number of pay periods worked by each particular PAGA Settlement Class
12 member during the PAGA Period as a proportion of all pay periods worked by all members of the
13 PAGA Settlement Class.

14 **5.5. TAX TREATMENT AND PAYMENT**

15 For the purpose of calculating Employee's Taxes and Required Withholding for the Individual
16 Settlement Amounts for Class Participants (including any payments to the Class Representative but
17 exclusive of her Incentive Award), the Parties agree that 20% of each Individual Settlement Amount
18 shall constitute payment in the form of wages (and each Class Participant will be issued an IRS Form
19 W-2 for such payment to him or her), and 80% of each Individual Settlement Amount shall constitute
20 penalties and interest (and each Class Participant will be issued an IRS Form 1099 for such payment
21 to him or her). Prior to final distribution, the Settlement Administrator shall calculate the total
22 Employee's Taxes and Required Withholding due as a result of the wage portion of Class Participants'
23 anticipated Individual Settlement Amounts and such actual amount will be deducted from the Net
24 Settlement Amount. Additionally, prior to the funding of the Gross Settlement Amount and final
25 distribution, the Settlement Administrator shall calculate the total Employer's Taxes due on the wage
26 portion of the Class Participants' Individual Settlement Amounts and issue instructions to Defendant
27 to separately fund these tax obligations/withholdings. The Parties understand that Plaintiff and the
28

1 Class Participants who receive any payment pursuant to this Settlement Agreement shall be solely
2 responsible for all other individual tax obligations.

3 With respect to the PAGA Payment and any payments made to individual members of the
4 PAGA Settlement Class, all such payments shall be treated as payments owing for penalties and interest
5 thereon and shall not be considered wages. The Settlement Administrator shall issue to members of the
6 PAGA Settlement Class an IRS Form 1099 reflecting such payment. Members of the PAGA Settlement
7 Class shall be solely responsible for the payment of all taxes with respect to any PAGA payments made
8 to them.

9 **5.6. NO EFFECT ON EMPLOYEE BENEFIT PLANS**

10 Neither the Class Settlement nor any amounts paid under the Class Settlement will modify any
11 previously credited hours, days, or weeks of service under any employee benefit plan, policy or bonus
12 program sponsored by Defendant. Such amounts will not form the basis for additional contributions to,
13 benefits under, or any other monetary entitlement under Defendant's sponsored benefit plans, policies,
14 or bonus programs. The payments made under the terms of this Settlement Agreement shall not be
15 applied retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other
16 form of compensation for the purposes of any of Defendant's benefit plan, policy, or bonus program.
17 Defendant retains the right to modify the language of its benefits plans, policies, and bonus programs
18 to reflect this intent and to make clear that any amounts paid pursuant to this Settlement Agreement are
19 not for "weeks worked," "weeks paid," "weeks of service," or any similar measuring term as defined
20 by applicable plans, policies, and bonus programs for purpose of eligibility, vesting, benefit accrual, or
21 any other purpose, and that additional contributions or benefits are not required by this Settlement
22 Agreement. Defendant does not consider the Class Settlement payments "compensation" for purposes
23 of determining eligibility for, or benefit accrual within, any benefit plans, policies, or bonus programs,
24 or any other plan sponsored by Defendant.

25 **5.7. CLASS ATTORNEY FEES AND EXPENSES**

26 As part of the motion for final approval of the Class Settlement, Class Counsel may apply for
27 an award of Class Attorney Fees and Expenses with the fee portion not to exceed one-third of the Gross
28 Settlement Amount (i.e., \$108,333.33) and the award of costs and expenses up to an additional

1 \$20,000.00. Defendant agrees to not object to any such fee, cost, or expense application in those
2 amounts.

3 As a condition of this Class Settlement, Class Counsel has agreed to pursue fees only in the
4 manner reflected by this subsection. Any Class Attorney Fees and Expenses awarded by the Court shall
5 be paid from the Gross Settlement Amount prior to arriving at the Net Settlement Amount and shall
6 not constitute payment to any Class Members. If Class Counsel voluntarily reduces the request for
7 Class Attorney Fees and Expenses or the Court's award of Class Attorney Fees and Expenses is less
8 than set forth above, the Net Settlement Amount shall be recalculated to reflect the actual Class
9 Attorney Fees and Expenses awarded. Defendant will not oppose requests for these payments provided
10 that they do not exceed these amounts.

11 The Class Attorney Fees and Expenses approved by the Court shall reflect: **(a)** all work
12 performed and costs and expenses incurred by, or at the direction of, any attorney purporting to
13 represent the Settlement Class through the date of this Settlement Agreement; **(b)** all work to be
14 performed and costs to be incurred in connection with approval by the Court of the Class Settlement;
15 **(c)** all work to be performed and costs and expenses, if any, incurred in connection with administering
16 the Class Settlement through the Effective Date and dismissal of the Action with prejudice; and **(d)** may
17 be based on the "catalyst theory" and/or the "common fund doctrine." The Settlement Administrator
18 will pay the Class Counsel Fees Payment and Class Counsel Expenses from the Gross Settlement
19 Amount using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for
20 taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment
21 and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding
22 any division or sharing of any of these payments. Failure of the Court to award the Class Counsel Fees
23 Payment or Class Counsel Litigation Expenses Payment, including in the amount requested by
24 Plaintiff, is not grounds to void this Agreement.

25 **6. SETTLEMENT ADMINISTRATION**

26 **6.1. COSTS AND EXPENSES**

27 All costs and expenses due to the Settlement Administrator in connection with its administration
28 of the Class Settlement, including, but not limited to, providing the Class Notice, locating Class

Members, processing Opt Out requests and objections, distributing the portion of the PAGA Payment payable to the LWDA, distributing the portion of the PAGA Payment payable to the members of the PAGA Settlement Class, and calculating, administering and distributing Individual Settlement Amounts to the Class Participants and related tax forms, shall be paid from the Gross Settlement Amount, and is not expected to exceed \$15,000.00.

6.2. PAYMENT BY DEFENDANT

Defendant shall deposit the Gross Settlement Amount in a lump sum payment plus the employer-side payroll taxes to the Settlement Administrator within seven (7) days of the Effective Date. In no event shall Defendant be obligated to pay or deposit with the Settlement Administrator more than \$325,000.00 plus the Employer's Taxes, except where the Escalator Provision is triggered.

7. NOTICE TO CLASS MEMBERS AND CLAIMS ADMINISTRATION PROCESS

7.1. THE SETTLEMENT ADMINISTRATOR

The Settlement Administrator will be responsible for: mailing the Class Notice and Share Form (**Exhibit 1** and **Exhibit 2**, respectively) to Class Members; posting notice of entry of final order and judgment certifying the Class Settlement and approving this Settlement Agreement; handling inquiries from Class Members concerning the Class Notice; determining Individual Settlement Amounts; determining individual payments to members of the PAGA Settlement Class; maintaining the settlement funds in an appropriate interest-bearing account; preparing, administering, and distributing Individual Settlement Amounts to Class Participants; preparing, administering, and distributing individual payments to members of the PAGA Settlement Class; distributing the portion of the PAGA Payment payable to the LWDA; issuing a final report and performing such other duties as the Parties may direct. Additionally, the Settlement Administrator will handle all tax document preparation and reporting, including state and federal tax forms, if any.

On a weekly basis, the Settlement Administrator will provide reports to Class Counsel and Defense Counsel with summary information updating them as to the number of validated and timely objections and Opt Out requests. The Settlement Administrator will serve on Class Counsel and Defense Counsel via e-mail date-stamped copies of the original Opt Out requests and objections no later than seven (7) days after their receipt. The Settlement Administrator will provide Class Counsel

1 with proof of mailing of the Class Notice, without listing individual Class Member names which the
2 Settlement Administrator will file with the Court at the time Class Counsel files its motion in support
3 of the Court's Final Approval and Fairness Hearing.

4 No later than thirty (30) days prior to the Final Approval and Fairness Hearing, the Settlement
5 Administrator will compile and deliver to Class Counsel and Defense Counsel a report with summary
6 information regarding: **(a)** the total amount of final Individual Settlement Amounts of each Class
7 Participant, without any identifying personal information; **(b)** the number of Class Participants to
8 receive such payments, and **(c)** the final number of Opt-Outs and objections.

9 Administrative Expenses are not anticipated to exceed \$15,000.00. Prior to the calculation and
10 distribution of the Individual Settlement Amounts, the Settlement Administrator shall calculate the
11 total Administrative Expenses through the conclusion of their services and such actual amount will be
12 deducted from the Gross Settlement Amount prior to the final calculation of the Individual Settlement
13 Amounts.

14 **7.2. NOTICE TO CLASS MEMBERS**

15 Notice shall be provided to Class Members in the following manner: Within fourteen (14) days
16 after the Preliminary Approval Date, Defendant shall provide the Settlement Administrator with an
17 updated list of Class Members and members of the PAGA Settlement Class containing names, social
18 security numbers, dates of employment, last-known addresses, and phone numbers (the "Database").
19 The Database shall be marked "Confidential – Settlement Administrator's Eyes Only." Class Counsel
20 shall not receive a copy of this list.

21 Within twenty-eight (28) days following the Preliminary Approval Date, the Settlement
22 Administrator shall determine the number of workweeks worked by each Class Member, populate the
23 data for each Class Member accordingly, and send each Class Member the Class Notice via first-class,
24 United States mail. The Class Notice shall also contain an easily-understood statement alerting the
25 Class Members that, unless they elect to Opt Out of the Class Settlement, the Class Member is releasing
26 and waiving all Released Claims against the Released Parties.

27 The Class Notice will inform Class Members of their estimated share of the settlement and the
28 number of workweeks they worked during the Class Period. Class Members may dispute their

workweeks if they believe they worked more weeks in the Class Period than Defendant's records show by submitting information to the Settlement Administrator no later than forty-five (45) days after being mailed the Class Notice and Share Form by the Settlement Administrator, which is the defined Response Deadline. The Settlement Administrator will jointly work with Plaintiff and Defendant to resolve the dispute in good faith. If Plaintiff and Defendant cannot agree over the workweeks to be credited, the Settlement Administrator shall make the final decision based on the information presented by the Class Member and Defendant.

7.3. OPT OUT PROCEDURE

Class Members who do not timely Opt Out of the Class Settlement will be deemed to participate in the Class Settlement and shall become Class Participants without having to submit a claim form or take any other action. To Opt Out of the Class Settlement, the Class Member must submit a letter or postcard to the Settlement Administrator by the Response Deadline. The Opt Out request must state the Class Member's name, address, telephone number, and signature. The Opt Out request should state something to the effect of:

"I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE *JUSTINA BALDERRAMA V. OMNI ENTERPRISES, INC.* LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE CLASS SETTLEMENT OF THIS LAWSUIT AND WILL NOT BE RELEASING ANY CLAIMS I MIGHT HAVE."

Any Opt Out request that is not postmarked by the Response Deadline will be invalid. If prior to the Response Deadline any Class Notice mailed to a Class Member is returned as having been undelivered by the United States Postal Service, the Settlement Administrator shall perform a skip trace search and seek an address correction for such Class Members, and a second Class Notice will be sent to any new or different address obtained. Such Class Members shall have an additional fourteen (14) days from the date of the mailing of the second Class Notice in which to Opt Out, object, or dispute the information provided in the Share Form if the Response Deadline would have otherwise passed prior to fourteen (14) days from the date of the mailing of the second Class Notice.

1 It will be presumed that, if an envelope containing the Class Notice has not been returned within
2 thirty (30) days of the mailing, the Class Member received the Class Notice. At least twenty-one (21)
3 days prior to the Final Approval and Fairness Hearing, the Settlement Administrator shall provide Class
4 Counsel and Defense Counsel with a Declaration of Due Diligence and Proof of Mailing with regard
5 to the mailing of the Class Notice and its attempts to locate Class Members. The declaration shall
6 specify the number of Class Members to whom the Class Notice was sent and the number of Class
7 Members to whom the Class Notice was not delivered, as well as information relating to the number
8 of Opt-Outs and objectors. Class Counsel shall file this declaration with the Court.

9 If the Settlement Administrator determines that an Opt Out request returned by a Class Member
10 before the Response Deadline is deficient, then the Settlement Administrator shall mail a deficiency
11 letter to that Class Member identifying the problem. If a Class Member submits both a dispute and an
12 Opt Out request, the Settlement Administrator shall make reasonable attempts to clarify as if the Opt
13 Out request were deficient. If the Class Member fails to cure the deficiency, the Opt Out request shall
14 be disregarded and the claim will be paid, and the Class Member will become bound by the judgment.

15 Class Participants will be bound by the Release of Released Claims set forth in the definition
16 of "Released Claims" provided in this Settlement Agreement.

17 A request to Opt Out of the Class Settlement shall **not** serve to exclude the Class Member from
18 participation in the PAGA Settlement Class. Opt-Outs shall still be entitled to their share of the PAGA
19 Payment. Class Members who are also members of the PAGA Settlement Class shall have no right or
20 ability to opt out of the portion of this Settlement Agreement releasing PAGA claims.

21 **7.4. OBJECTION PROCEDURE**

22 The Class Notice shall inform the Class Members of their right to object to the Class Settlement
23 if they do not Opt Out. Any Class Participants who wish to object to the Class Settlement may submit
24 a written objection to the Settlement Administrator no later than the Response Deadline. Only Class
25 Participants may object to the Settlement. The objection should include the case name and number and
26 must set forth, in clear and concise terms, a statement of the reasons why the objector believes that the
27 Court should find that the proposed Class Settlement is not in the best interest of the Settlement Class
28 and the reasons why the Class Settlement should not be approved, including the legal and factual

arguments supporting the objection. If an objector also wishes to appear at the Final Approval and Fairness Hearing, in person or through an attorney, they may do so. The Settlement Administrator will promptly serve copies of any objection or notice of intention to appear on Class Counsel and Defense Counsel. Class Members wishing to make an objection may appear at the Final Approval and Fairness Hearing, either in person or through a lawyer retained at their own expense.

7.5. NOTICE OF FINAL JUDGMENT

Within seven (7) days after the Court has held a Final and Fairness Approval Hearing and entered a final order certifying the Class for settlement purposes only and approving the Class Settlement, the Settlement Administrator will give notice of judgment to Class Members pursuant to rule 3.771(b) of the California Rules of Court, by posting a copy of said order and final judgment on its website at a web address to be included in the Class Notice.

8. CLASS SETTLEMENT FUNDING AND DISTRIBUTION

8.1. ALLOCATION OF THE GROSS SETTLEMENT AMOUNT

The claims of all Class Members are settled for the Gross Settlement Amount of \$325,000.00, which will be allocated as follows:

1. The Administrative Expenses, estimated not to exceed \$15,000.00;
2. Class Counsel's attorney fees not to exceed \$108,333.33;
3. Class Counsel's litigation costs and expenses not to exceed \$20,000.00;
4. The Incentive Award, not to exceed \$7,500.00; and
5. PAGA Payment to LWDA of \$15,000.00.

For purposes of calculating the estimated Individual Settlement Amounts, the Settlement Administrator shall calculate the estimated Net Settlement Amount based on the estimated values provided above prior to sending Notice to the Class Members. Prior to final distribution, the Settlement Administrator shall recalculate the final Net Settlement Amount based on the actual values of the amounts in each category.

8.2. CALCULATION OF THE INDIVIDUAL SETTLEMENT AMOUNTS FOR CLASS PARTICIPANTS

Individual Settlement Amounts to be paid to Class Participants shall be paid from the Net Settlement Amount. The portion of the Net Settlement Amount shall be distributed pro rata on a “checks cashed” basis based on the proportional number of weeks worked by each Class Member during the Class Period.

Defendant will provide the Settlement Administrator with any information reasonably necessary to perform the calculation of number of workweeks for each Class Member, and any other reasonably required information the Settlement Administrator requests to perform the calculations required under this Settlement Agreement. Defendant shall have no responsibility for deciding the validity of the Individual Settlement Amounts or any other payments made pursuant to this Settlement Agreement, shall have no involvement in or responsibility for the determination or payment of Employee’s Taxes and Required Withholding, and shall have no liability for any errors made with respect to such Employee’s Taxes and Required Withholding. Although the Settlement Administrator will calculate and pay the standard Employee’s Taxes and Required Withholding on the portion of the Individual Settlement Amounts constituting wages on their behalf, Plaintiff and Class Participants represent and understand that they shall be solely responsible for any and all tax obligation associated with their respective Individual Settlement Amounts and Incentive Awards.

8.3. CALCULATION OF THE PAYMENTS FOR INDIVIDUAL MEMBERS OF THE PAGA SETTLEMENT CLASS

Each member of the PAGA Settlement Class shall be entitled to receive a portion of the PAGA Payment. The PAGA Payment shall consist of the penalties pursuant to PAGA that the Parties have agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which is \$20,000.00. The PAGA Payment is to be approved by the Court pursuant to Labor Code section 2699 and is to be distributed as follows: seventy-five percent (75%) (i.e., \$15,000.00) to the LWDA and twenty-five percent (25%) (i.e., \$5,000.00) to the PAGA Settlement Class.

The portion of the PAGA Payment allocated to the PAGA Settlement Class shall be distributed to the PAGA Settlement Class based on the pro rata number of pay periods worked by each particular

1 PAGA Settlement Class member during the PAGA Period as a proportion of all pay periods worked
2 by all PAGA Settlement Class members during the PAGA Period. Each member of the PAGA
3 Settlement Class, including Plaintiff, shall be responsible for the payment of the Employee's Taxes and
4 Required Withholding with respect to their share of the PAGA Payment and shall hold Defendant
5 harmless from any and all liability with regard thereto.

6 Defendant will provide the Settlement Administrator with any information reasonably
7 necessary to perform the calculation of number of pay periods worked for each PAGA Settlement Class
8 member, and any other reasonably required information the Settlement Administrator requests to
9 perform the calculations required under this Settlement Agreement. Defendant shall have no
10 responsibility for deciding the validity of the individual payment amounts allocated to each member of
11 the PAGA Settlement Class or any other payments made pursuant to this Settlement Agreement, shall
12 have no involvement in or responsibility for the determination or payment of Employee's Taxes and
13 Required Withholding, and shall have no liability for any errors made with respect to such Employee's
14 Taxes and Required Withholding.

15 The members of the PAGA Settlement Class shall be solely responsible for any and all tax
16 obligation associated with their respective shares of the PAGA Payment.

17 **8.4. TIME FOR PAYMENT OF ATTORNEY FEES AND EXPENSES**

18 The Settlement Administrator shall distribute to Class Counsel any attorney fees and expenses
19 approved by the Court no later than fourteen (14) days after the Effective Date.

20 **8.5. TIME FOR PAYMENT OF INCENTIVE AWARD**

21 The Settlement Administrator shall distribute to Plaintiff the Incentive Award approved by the
22 Court no later than fourteen (14) days after the Effective Date.

23 **8.6. TIME FOR PAYMENT OF PAGA PAYMENT TO THE LWDA**

24 The Settlement Administrator shall distribute to the LWDA the portion of the PAGA Payment
25 due to it and approved by the Court no later than fourteen (14) days after the Effective Date.
26
27
28

**8.7. TIME FOR PAYMENT OF TAXES AND REQUIRED WITHHOLDING AND
INDIVIDUAL SETTLEMENT AMOUNTS**

The Settlement Administrator shall make every effort to pay the Employee's Taxes and Required Withholding associated with each Class Participant's Individual Settlement Amount and mail the Individual Settlement Amount to each Class Participant, by first-class United States mail, to the last-known address no later than fourteen (14) days after the Effective Date. If the Settlement Administrator is not able to do so within the time period set forth above, it shall so inform Class Counsel and Defense Counsel and provide an approximate date by which the Employee's Taxes and Required Withholding shall be paid and the Individual Settlement Amounts will be mailed. Under no circumstances shall the Settlement Administrator distribute checks to Class Participants until all Individual Settlement Amounts have been considered, calculated, and accounted for, and all of the remaining monetary obligations have been calculated and accounted for.

Within two hundred ten (210) days of mailing the Individual Settlement Amounts to Class Participants, the Settlement Administrator shall file with the Court and provide to Class Counsel a declaration of payment. If any Class Participant is deceased, payment shall be made payable to the estate of that Class Member and delivered to the executor or administrator of that estate, unless the Settlement Administrator has received an affidavit or declaration pursuant to California Probate Code section 13101, in which case payment shall be made to the affiant(s) or declarant(s).

8.8. NON-CASHED SETTLEMENT CHECKS

Any funds associated with checks that have not been cashed within one hundred eighty (180) days, will become void and the Individual Settlement Amount associated with the uncashed check will be remitted pursuant to Code of Civil Procedure section 384 to the California State Controller for deposit in the Unclaimed Property Fund in the name of the individual whose check was uncashed. The Parties agree that this disposition results in no "unpaid residue" within the meaning of California Civil Procedure Code section 384, as the entire Net Settlement Amount will be paid out to Class Participants, whether or not they all cash their Individual Settlement Amount checks. Therefore, Defendant shall not be required to pay any interest on said amount. For the purposes of determining whether Defendant has met their financial obligation to pay the Individual Settlement Payment, Defendant will be deemed to

1 have fulfilled its obligation upon the mailing of the check to the Class Member, regardless of whether
2 such Class Member subsequently negotiates the check.

3 **8.9. DISPUTES REGARDING CLASS MEMBER WORKWEEKS DATA OR**
4 **PAYMENT OF INDIVIDUAL SETTLEMENT SHARES**

5 Class Member Workweeks and the corresponding Individual Settlement Amount shall be
6 calculated using the employment and payroll records of Defendant, which presumptively shall be
7 deemed to be full, complete, and accurate for purposes of this Settlement Agreement. To overcome
8 that presumption, any Class Member objecting to the accuracy of the number of Workweeks or amount
9 of the Individual Settlement Amount must submit documentary evidence, such as pay stubs or other
10 written employment records, to the Settlement Administrator. Each Class Member may dispute the
11 number of Workweeks or their estimated Individual Settlement Amount contained on their Class
12 Notice (“Workweeks Dispute”). Any such Workweeks Dispute must be mailed or faxed to the
13 Settlement Administrator by the Class Member, postmarked or fax-stamped on or before the Response
14 Deadline. The Settlement Administrator shall immediately provide copies of all disputes to counsel for
15 Defendant, shall inform Class Counsel of the dispute without disclosing the identity of the Class
16 Member making the dispute, and shall immediately attempt to resolve all such disputes directly with
17 relevant Class Members with the assistance of Defendant, Defense Counsel, and Class Counsel. If the
18 dispute cannot be resolved, it shall be submitted to the Settlement Administrator for its final, non-
19 appealable decision. The Settlement Administrator shall use its best efforts to resolve all such disputes
20 prior to the Effective Date. If, however, a dispute arises or is not resolved until after the Settlement
21 Amount has been distributed, the initial calculation shall stand (as Defendant shall be under no
22 obligation to pay any amounts in excess of the Gross Settlement Amount under this Settlement
23 Agreement).

24 **9. NULLIFICATION OF THIS SETTLEMENT AGREEMENT**

25 **9.1. NON-APPROVAL OF THIS SETTLEMENT AGREEMENT**

26 The Class Settlement and conditional class certification shall be considered null and void, and
27 neither the Class Settlement, conditional class certification, nor any of the related negotiations or
28 proceedings, shall be of any force or effect, and all Parties to the Class Settlement shall stand in the

1 same position, without prejudice, as if the Class Settlement had been neither entered into nor filed with
2 the Court, if any of the following occur: **(a)** the Court should for any reason fail to approve this
3 Settlement Agreement in the form agreed to by the Parties; **(b)** the Court should for any reason fail to
4 enter a judgment with prejudice of the Action, or **(c)** the approval of the Class Settlement and judgment
5 is reversed, modified, or declared or rendered void. Notwithstanding the foregoing, the Parties may
6 attempt in good faith to cure any perceived defects in this Settlement Agreement to facilitate approval.

7 **9.2. PARTIES' RIGHTS TO VOID CLASS SETTLEMENT; ESCALATOR** 8 **PROVISION**

9 If 10% or more members of the Settlement Class timely submit Opt Out requests, Defendant(s)
10 shall have the right (but not the obligation) to void the settlement described in this MOU. Defendant
11 agrees not to take any action that can be construed as encouraging Class Members to opt out of the
12 Settlement for the purposes of triggering its ability to void the Agreement.
13 If the number of workweeks worked by the Class Members is greater than 10% above 18,092
14 workweeks, then the GSA shall be increased proportionately for each additional Workweek above the
15 10% buffer.

16 **9.3. INVALIDATION**

17 Invalidation of any material portion of this Settlement Agreement shall invalidate the Class
18 Settlement in its entirety, unless the Parties subsequently agree in writing that the remaining provisions
19 of the Class Settlement are to remain in full force and effect.

20 **9.4. STAY ON APPEAL**

21 If a timely appeal from the approval of the Class Settlement and judgment, the judgment shall
22 be stayed, and Defendant shall not be obligated to fund the Gross Settlement Amount or take any other
23 actions required by this Settlement Agreement until all appeal rights have been exhausted by operation
24 of law.

25 **10. MOTIONS FOR COURT APPROVAL**

26 **10.1. PRELIMINARY APPROVAL**

27 As soon as practicable after execution of this Settlement Agreement, Class Counsel will submit
28 this Settlement Agreement to the Court along with a Motion for Preliminary Approval of the Class

1 Settlement. Each party shall cooperate to present the Class Settlement to the Court for preliminary
2 approval in a timely fashion.

3 **10.2. FINAL APPROVAL**

4 The Final Approval and Fairness Hearing shall be held before the Court. At the Final Approval
5 and Fairness Hearing, Plaintiff shall move the Court for the entry of the final order certifying the
6 Settlement Class for settlement purposes only and approving the Class Settlement as being fair,
7 reasonable, and adequate to the Class Participants within the meaning of California Rules of Court,
8 Rule 3.769, subdivisions (c), (d) and (e), and for the entry of a final judgment of the Action consistent
9 with the terms of the Class Settlement and rule 3.769, subdivision (h), of the California Rules of Court.
10 Class Counsel and Defense Counsel shall submit to the Court such pleadings and/or evidence as may
11 be required for the Court's determination.

12 **11. RELEASES AND WAIVERS**

13 **11.1. RELEASE OF CLAIMS BY THE SETTLEMENT CLASS**

14 Upon the Effective Date, the Releasing Parties shall be deemed to each release the Released
15 Parties, and each of them, of and from any and all Released Claims arising during the Class Period. It
16 is the desire of the Parties and the Releasing Parties to fully, finally, and forever settle, compromise,
17 and discharge the Released Claims. Each of the Releasing Parties, including each Class Participant,
18 will be bound by the release of Released Claims as a result of the Class Settlement and to the terms of
19 the final judgment and the satisfaction of such judgment.

20 Class Participants will be deemed to have acknowledged and agreed that their claims for wages
21 and/or penalties in the Action are disputed, and that their Individual Settlement Amount constitutes
22 payment of all sums allegedly due to them. Class Participants will be deemed to have acknowledged
23 and agreed that California Labor Code section 206.5 is not applicable to the Individual Settlement
24 Amount. That section provides in pertinent part as follows:

1 “An employer shall not require the execution of a release of a claim or right on account
2 of wages due, or to become due, or made as an advance on wages to be earned, unless
3 payment of those wages has been made.”

4 **11.2. RELEASE OF CLAIMS BY PAGA SETTLEMENT CLASS**

5 Upon the Effective Date, the PAGA Settlement Class shall be deemed to release the Released
6 Parties, and each of them, of and from any and all PAGA Released Claims arising during the PAGA
7 Period. It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge the
8 PAGA Released Claims. Each of the PAGA Settlement Class members will be bound by the release of
9 PAGA Released Claims as a result of the Settlement and to the terms of the final judgment and the
10 satisfaction of such judgment.

11 The PAGA Settlement Class members shall have no right or ability to opt out of the portion of
12 this Settlement Agreement releasing PAGA Released Claims.

13 **11.3. RELEASE OF CLAIMS BY PLAINTIFF**

14 Plaintiff, on behalf of herself and her dependents, heirs and assigns, beneficiaries, devisees,
15 legatees, executors, administrators, agents, trustees, conservators, guardians, personal representatives,
16 and successors-in-interest, whether individual, class, representative, legal, equitable, direct or indirect,
17 or any other type or in any other capacity, shall and does hereby forever release, discharge and agree
18 to hold harmless the Released Parties from any and all charges, complaints, claims, liabilities,
19 obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights,
20 demands, costs, losses, debts and expenses (including attorney fees and costs), known or unknown, at
21 law or in equity, which she may now have or may have after the signing of this Settlement Agreement,
22 arising out of or in any way connected with her employment with Defendant including, the Released
23 Claims, claims that were asserted or could have been asserted in the Complaint, and any and all
24 transactions, occurrences, or matters between the Parties occurring prior to the date this Settlement
25 Agreement is fully executed. Without limiting the generality of the foregoing, this release shall include,
26 but not be limited to, any and all claims under: **(a)** the Americans with Disabilities Act; **(b)** Title VII
27 of the Civil Rights Act of 1964; **(c)** the Civil Rights Act of 1991; **(d)** 42 U.S.C. § 1981; **(e)** the Age
28

1 Discrimination in Employment Act; **(f)** the Fair Labor Standards Act; **(g)** the Equal Pay Act; **(h)** the
2 Employee Retirement Income Security Act, as amended; **(i)** the Consolidated Omnibus Budget
3 Reconciliation Act; **(j)** the Rehabilitation Act of 1973; **(k)** the Family and Medical Leave Act; **(l)** the
4 Civil Rights Act of 1966; **(m)** the California Fair Employment and Housing Act; **(n)** the California
5 Constitution; **(o)** the California Labor Code; **(p)** the California Government Code; **(q)** the California
6 Civil Code; and **(r)** any and all other federal, state, and local statutes, ordinances, regulations, rules,
7 and other laws, and any and all claims based on constitutional, statutory, common law, or regulatory
8 grounds as well as any other claims based on theories of wrongful or constructive discharge, breach of
9 contract or implied contract, fraud, misrepresentation, promissory estoppel, or intentional infliction of
10 emotional distress, negligent infliction of emotional distress, or damages under any other federal, state,
11 or local statutes, ordinances, regulations, rules, or laws. This release is for any and all relief, no matter
12 how denominated, including, but not limited to, back pay, front pay, vacation pay, bonuses,
13 compensatory damages, tortious damages, liquidated damages, punitive damages, damages for pain
14 and suffering, and attorney fees and costs, and Plaintiff hereby forever releases, discharges and agrees
15 to hold harmless Defendant and the Released Parties from any and all claims for attorney fees and costs
16 arising out of the matters released in this Settlement Agreement.

17 Plaintiff specifically acknowledges that she is aware of and familiar with the provisions of
18 California Civil Code section 1542, which provides as follows:

19 “A general release does not extend to claims that the creditor or releasing party does not
20 know or suspect to exist in his or her favor at the time of executing the release and that,
21 if known by him or her, would have materially affected his or her settlement with the
22 debtor or released party.”
23

24 Plaintiff, being aware of California Civil Code section 1542, hereby expressly waives and
25 relinquishes all rights and benefits she may have under section 1542 as well as any other statutes or
26 common law principles of a similar effect. Plaintiff may hereafter discover facts in addition to or
27 different from those which she now knows or believes to be true with respect to the subject matter of
28 all the claims referenced herein, but agrees that, upon the Effective Date, Plaintiff shall and hereby

1 does fully, finally, and forever settle and release any and all claims against the Released Parties, known
2 or unknown, suspected or unsuspected, contingent or non-contingent, that were asserted or could have
3 been asserted upon any theory of law or equity without regard to the subsequent discovery of existence
4 of such different or additional facts.

5 **11.4. CIRCULAR 230 DISCLAIMER**

6 Each party to this Settlement Agreement (for purposes of this section, the “Acknowledging
7 Party”; and each party to this Agreement other than the Acknowledging Party, an “Other Party”)
8 acknowledges and agrees that **(1)** no provision of this Settlement Agreement, and no written
9 communication or disclosure between or among the parties or their attorneys and other advisers, is or
10 was intended to be, nor shall any such communication or disclosure constitute or be construed or be
11 relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31
12 C.F.R. Part 10); **(2)** the Acknowledging Party **(a)** has relied exclusively upon her or its own
13 independent legal and tax advisers for advice (including tax advice) in connection with this Settlement
14 Agreement, **(b)** has not entered into this Settlement Agreement based upon the recommendation of any
15 other party or any attorney or advisor to any other party, and **(c)** is not entitled to rely upon any
16 communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty that
17 may be imposed on the Acknowledging Party; and **(3)** no attorney or adviser to any other party has
18 imposed any limitation that protects the confidentiality of any such attorney’s or adviser’s tax strategies
19 (regardless of whether such limitation is legally binding) upon disclosure by the Acknowledging Party
20 of the tax treatment or tax structure of any transaction, including any transaction contemplated by this
21 Settlement Agreement.

22 **12. DUTIES OF THE PARTIES**

23 **12.1. MUTUAL FULL COOPERATION**

24 The Parties agree to cooperate fully with one another to accomplish and implement the terms
25 of this Settlement Agreement. Such cooperation shall include, but not be limited to, execution of such
26 other documents and the taking of such other actions as may reasonably be necessary to fulfill the terms
27 of this Settlement Agreement. The Parties shall use their best efforts, including all efforts contemplated
28 by this Settlement Agreement and any other efforts that may become necessary by court order or

1 otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable
2 after execution of this Settlement Agreement, Class Counsel, with the cooperation of Defendant and
3 Defense Counsel, shall take all necessary and reasonable steps to secure the Court's final approval of
4 this Settlement Agreement.

5 **12.2. DUTY TO SUPPORT AND DEFEND THE CLASS SETTLEMENT**

6 The Parties agree to abide by all of the terms of this Settlement Agreement in good faith and to
7 support the Class Settlement fully and to use their best efforts to defend this Class Settlement from any
8 legal challenge, whether by appeal or collateral attack.

9 **12.3. DUTIES PRIOR TO COURT APPROVAL**

10 Class Counsel shall promptly submit this Settlement Agreement to the Court for preliminary
11 approval and determination by the Court as to its fairness, adequacy, and reasonableness. Promptly
12 upon execution of this Settlement Agreement, Class Counsel shall apply to the Court for the entry of a
13 preliminary order scheduling a hearing on the question of whether the proposed Class Settlement
14 should be approved as fair, reasonable, and adequate as to the Class Members, approving as to form
15 and content the proposed Class Notice and Share Form attached hereto as **Exhibit 1** and **Exhibit 2**,
16 respectively, and directing the mailing of the Class Notice to Class Members. While Defendant can
17 reserve its right to object to facts or assertions made in the moving papers, Defense Counsel shall file
18 a notice of non-opposition to the granting of the motion for preliminary approval or join in the motion.

19 **13. MISCELLANEOUS PROVISIONS**

20 **13.1. VOIDING THIS SETTLEMENT AGREEMENT**

21 Pending Court approval and other than as provided herein, if any of the conditions set forth in
22 this Settlement Agreement are not met and satisfied, this Settlement Agreement may, at the option of
23 either Plaintiff or Defendant, be ineffective, void, and of no further force and effect, and may not be
24 used or be admissible in any subsequent proceeding, either in this Court or in any other court or forum.
25 If either Party decides to void the Settlement Agreement, then the Settlement Agreement and
26 conditional class certification shall be considered void, and neither the Settlement Agreement,
27 conditional class certification, nor any of the related negotiations or proceedings, shall be of any force
28 or effect, and the Parties shall stand in the same position, without prejudice, as if this Settlement

1 Agreement had been neither entered into nor filed with the Court. Should any Party choose to void the
2 Class Settlement under this subsection, such Party shall be responsible for all Settlement Administrator
3 fees and costs actually incurred.

4 **13.2. DIFFERENT FACTS**

5 The Parties acknowledge that, except for matters expressly represented herein, the facts in
6 relation to the dispute and all claims released by the terms of this Settlement Agreement may turn out
7 to be different from the facts now known by each party and/or its counsel, or believed by such Party or
8 counsel to be true, and each Party therefore expressly assumes the risk of the existence of different or
9 presently unknown facts, and agrees that this Settlement Agreement shall be in all respects effective
10 and binding despite such difference.

11 **13.3. NO PRIOR ASSIGNMENTS**

12 The Parties represent, covenant, and warrant that they have not directly or indirectly assigned,
13 transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any
14 portion of any liability, claim, demand, action, cause of action, or right herein released and discharged
15 except as set forth herein.

16 **13.4. NON-ADMISSION**

17 Nothing in this Settlement Agreement shall be construed as or deemed to be an admission by
18 any Party of any liability, culpability, negligence, or wrongdoing toward any other Party, or any other
19 person, and the Parties specifically disclaim any liability, culpability, negligence, or wrongdoing
20 toward each other or any other person. Each of the Parties has entered into this Settlement Agreement
21 with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses,
22 and contingencies. Nothing herein shall constitute any admission by Defendant of wrongdoing or
23 liability, or of the truth of any factual allegations in the Action. Nothing herein shall constitute any
24 admission by Defendant regarding the merits of the Claims in this Action, including but not limited to
25 claims for unpaid wages or violations under California or federal law. Nothing herein shall constitute
26 an admission by Defendant that the Action was properly brought as a class or representative action
27 other than for settlement purposes. To the contrary, Defendant has denied and continues to deny each
28 and every material factual allegation and all Claims. To this end, the Class Settlement of the Action,

1 the negotiation and execution of this Settlement Agreement, and all acts performed or documents
2 executed pursuant to or in furtherance of this Settlement Agreement or the Class Settlement are not,
3 shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or
4 liability on the part of Defendant or of the truth of any of the factual allegations in the Complaint in the
5 Action; and are not, shall not be deemed to be, and may not be used as, an admission or evidence of
6 any fault or omission on the part of Defendant in any civil, criminal, or administrative proceeding in
7 any court, administrative agency, or other tribunal.

8 **13.5. NON-EVIDENTIARY USE**

9 Neither this Agreement nor any of its terms, nor any statements or conduct in the negotiation
10 or drafting of it, shall be offered or used as evidence by Plaintiff, any Class Member (including any
11 individual who requested to be excluded from the Settlement Class), Defendant, or its, her, his, or their
12 respective counsel, in the Action, except as is reasonably necessary to effectuate the Settlement
13 Agreement's purpose and terms. This Settlement Agreement may, however, be used by Defendant and
14 the Released Parties to prove or defend against any claim released herein by any Class Member in any
15 judicial, quasi-judicial, administrative, or governmental proceeding.

16 **13.6. MEDIA OR PRESS**

17 Plaintiff and Defendant, and their respective counsel, recognize, accept, and agree that the
18 Parties to this Settlement Agreement desire that the terms of this Settlement Agreement, the fact of the
19 Class Settlement embodied in this Settlement Agreement, the disposition of the Action, the Action, and
20 all matters relating to the litigation of the Action, including discovery proceedings therein, and evidence
21 obtained during the course of the Action, shall not be discussed with or presented to the media or press.

22 **13.7. NON-RETALIATION**

23 Defendant understands and acknowledges that it has a legal obligation to not retaliate against
24 any Class Member who elects to participate in the Class Settlement or elects to Opt Out of the Class
25 Settlement. Defendant will refer any inquiries regarding this Class Settlement to the Settlement
26 Administrator or Class Counsel and will not discourage Class Members who are employees, directly
27 or indirectly, from making claims, opting out, or objecting to the Class Settlement. None of the Parties,
28

1 or their respective attorneys or agents, shall solicit or encourage any Class Members, directly or
2 indirectly, to Opt Out of the Class Settlement.

3 **13.8. CONSTRUCTION**

4 The Parties agree that the terms and conditions of this Settlement Agreement are the result of
5 lengthy, intensive, arms-length, non-collusive negotiations between the Parties and that this Settlement
6 Agreement is not to be construed in favor of or against any party by reason of the extent to which any
7 party or its counsel participated in the drafting of this Settlement Agreement. If any of the dates in this
8 Settlement Agreement fall on a weekend, bank or court holiday, the time to act shall be extended to the
9 next business day.

10 **13.9. GOVERNING LAW**

11 This Settlement Agreement is intended to and shall be governed by the laws of the State of
12 California, without regard to conflict of law principles, in all respects, including execution,
13 interpretation, performance, and enforcement.

14 **13.10. NOTICES**

15 Except for Class Member notices required to be made by the Settlement Administrator, all
16 notices or other communications required or permitted under this Settlement Agreement shall be in
17 writing and shall be sufficiently given if delivered in person to the party or their counsel by U.S.
18 certified mail, postage prepaid, e-mail, facsimile, or overnight delivery addressed to the address of the
19 party appearing in this Settlement Agreement.

20 **13.11. CAPTIONS AND INTERPRETATIONS**

21 Section titles or captions contained herein are inserted as a matter of convenience and for
22 reference only and in no way define, limit, extend, or describe the scope of this Settlement Agreement
23 or any provision thereof.

24 **13.12. MODIFICATION**

25 This Settlement Agreement may not be changed, altered, or modified, except in writing signed
26 by the Parties or the Parties' counsel on their behalf. If preliminary or final approval of this Settlement
27 Agreement has been granted by the Court, then any such amendments or modifications to this
28

1 Settlement Agreement shall be approved by the Court. This Settlement Agreement may not be
2 discharged except by performance in accordance with its terms or by a writing signed by the Parties.

3 **13.13. INTEGRATION CLAUSE**

4 This Settlement Agreement contains the entire agreement between the Parties relating to the
5 Class Settlement of the Action and the transactions contemplated thereby, and all prior or
6 contemporaneous agreements, understandings, representations, and statements, whether oral or written,
7 and whether by a party or such party's legal counsel, are hereby superseded. No rights under this
8 Settlement Agreement may be waived except in writing as provided above.

9 **13.14. SUCCESSORS AND ASSIGNS**

10 This Settlement Agreement shall be binding on and inure to the benefit of the Parties and Class
11 Members (excluding only persons who timely Opt Out) and their respective present and former heirs,
12 trustees, executors, administrators, representatives, officers, directors, shareholders, agents, employees,
13 insurers, attorneys, accountants, auditors, advisors, consultants, pension plans, welfare benefit plans,
14 fiduciaries, parent companies, subsidiaries, affiliates, related companies, joint ventures, predecessors,
15 successors, and assigns.

16 **13.15. CORPORATE SIGNATORIES**

17 Any person executing this Settlement Agreement or any such related document on behalf of a
18 corporate signatory or on behalf of a partnership hereby warrants and promises, for the benefit of all
19 Parties hereto, that such person has been duly authorized by such corporation or partnership to execute
20 this Settlement Agreement or any such related document.

21 **13.16. EXECUTION IN COUNTERPARTS**

22 This Settlement Agreement shall become effective upon its execution by all of the undersigned.
23 The Parties may execute this Settlement Agreement in counterparts, and execution of counterparts shall
24 have the same force and effect as if all Settling Parties had signed the same instrument.

25 **13.17. ATTORNEY FEES, COSTS, AND EXPENSES**

26 Except as otherwise specifically provided for herein, each party shall bear her or its own
27 attorney fees, costs, and expenses, taxable or otherwise, incurred by them in or arising out of the Action
28 and shall not seek reimbursement thereof from any other party to this Settlement Agreement.

13.18. ACTION TO ENFORCE AGREEMENT

In any suit or court action to enforce the terms of this Agreement, the prevailing party shall be entitled to recover her or its attorney fees and costs.

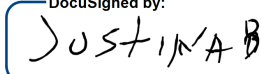
14. EXECUTION

The Parties and their counsel have executed this Settlement Agreement on the date below their signatures or the signature of their representatives. The date of this Settlement Agreement shall be the date of the latest signature.

APPROVAL AND EXECUTION BY PARTIES

CLASS REPRESENTATIVE:

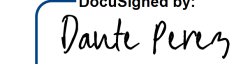
Dated: 6/25/2024

DocuSigned by:

 93760910D5124F7...
 Justina Balderrama
 Plaintiff and Class Representative

DEFENDANT:

Dated: 9/5/2024

Omni Enterprises, Inc.

DocuSigned by:

 8DA6D304729A4C7...

By: Dante Perez

Title: CEO

APPROVED AS TO FORM BY COUNSEL

CLASS COUNSEL:

Dated: June 26, 2024

Melmed Law Group P.C.


 Jonathan Melmed
 Attorneys for Plaintiff

DEFENDANT'S COUNSEL:

Dated: 9/10/2024

Adli Law Group, P.C.

DocuSigned by:

Jamie Wright

325473918C4041D...
Jamie Wright
Attorneys for Defendant

EXHIBIT 1

Notice of Proposed Class Action and PAGA Settlement

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

JUSTINA BALDERRAMA, an individual, on
behalf of herself, the State of California, as a
private attorney general, and on behalf of all
others similarly situated,

Plaintiff,

v.

OMNI ENTERPRISES, INC., a California
Corporation; and DOES 1 TO 50,

Defendants.

Case No.: 30-2022-01256174-CU-OE-CXC

**Notice of Proposed Class and PAGA
Representative Action Settlement**

A court authorized this notice. This is not a solicitation from a lawyer.

1 **NOTICE OF PROPOSED CLASS AND PAGA REPRESENTATIVE ACTION**

2 **SETTLEMENT**

3 *You may be eligible to receive a settlement payment. Please read this notice carefully.*

4 A proposed class action settlement agreement (the “Settlement”) has been reached between:
5 (1) Plaintiff Justina Balderrama (“Plaintiff”), individually and in her representative capacity on behalf
6 of a group of prospective class members defined below, and as a private attorney general on behalf of
7 the State of California; and (2) Defendant Omni Enterprises, Inc. (“Defendant”). The Settlement
8 resolves disputed claims against Defendant arising out of its compensation practices during the period
9 from April 22, 2018, through the earliest of 90 days after the date of mediation or the date of preliminary
10 approval of the settlement (the “Class Period”) as applied to all individuals who are or were employed
11 by Defendants as non-exempt employees in California during the Class Period (“Class Members”).

12 The Court has granted preliminary approval of the Settlement and ordered this notice to be sent
13 to you because you may be entitled to money under the Settlement and because the Settlement affects
14 your legal rights.

15 **NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE**
16 **SETTLEMENT:** If you are a Class Member (as defined above) and received this notice, you are
17 automatically included in the Settlement and do not need to take any further action to receive a
18 payment. If you accept your settlement amount, you will release the claims described below.

19 **1. DESCRIPTION OF THE LAWSUIT**

20 Plaintiff, individually and in her representative capacity on behalf of the Class Members, and
21 as a private attorney general on behalf of the State of California, is pursuing a lawsuit against Defendant
22 in the Superior Court of the State of California for the County of Orange in the matter of *Justina*
23 *Balderrama v. Omni Enterprises, Inc.*, case number 30-2022-01256174-CU-OE-CXC (the “Action”).
24 The Action sought recovery for Defendant’s alleged: (1) failure to pay minimum wage for all hours
25 worked; (2) failure to pay proper overtime wages; (3) failure to provide compliant rest periods and pay
26 missed rest break premiums; (4) failure to provide compliant meal periods and pay missed meal period
27 premiums; (5) failure to maintain accurate employment records; (6) failure to pay timely wages during
28 employment; (7) failure to pay all wages due and owing at separation; (8) failure to provide complete

1 and accurate wage statements; and (9) deceptive, fraudulent, or otherwise unlawful business practices
2 based on the foregoing in violation of California’s Unfair Competition Law.

3 **Defendant denies all liability, denies all allegations in the Action, and has raised various**
4 **defenses to the claims.** Defendant asserts that it fully complied with all applicable wage and hour laws,
5 and contends that civil penalties under PAGA are not warranted. Defendant also denies that the Action
6 is suitable for class certification. Defendant has entered into the Settlement solely for purposes of
7 resolving this dispute to avoid costly, disruptive, and time-consuming litigation and does not admit to
8 any wrongdoing or liability.

9 The Court has not ruled on the merits in the Action. By approving the Settlement and issuing
10 this notice, the Court is *not* suggesting which side would win or lose the case if it went to trial or
11 whether the claims are suitable for class certification. To avoid the additional expense, inconvenience,
12 and risk of continued litigation, however, Plaintiff and Defendant (the “Parties”) have concluded that
13 it is in their respective best interests and the interests of the Class Members to settle the Action on the
14 terms summarized in this notice. The Settlement was reached after Defendant provided extensive
15 information and documents to Plaintiff’s counsel, and after lengthy arms-length non-collusive
16 negotiations between the Parties, including mediation with an experienced and well-respected mediator
17 in California. In these negotiations, both sides recognized the substantial risk of the Court deciding
18 against them at trial and determined that the Settlement was a fair, reasonable, and adequate way to
19 resolve the disputed claims.

20 Plaintiff and Plaintiff’s counsel—Jonathan Melmed, Laura Supanich, and Michiko Vartanian
21 of Melmed Law Group P.C. (“Class Counsel”)—support the Settlement. Among the reasons for support
22 are the defenses to liability potentially available to Defendant, the risk of denial of class certification,
23 the inherent risk of trial on the merits, and the delays and uncertainties associated with litigation.
24 Plaintiff and Class Counsel believe that the settlement described in this notice is fair, adequate,
25 reasonable, and in the best interests of Plaintiff and the Class Members.

26 Under the Settlement, the following settlement class will be certified under California law: *all*
27 *individuals who are or were employed by Defendants as non-exempt employees in California during*
28 *the Class Period.* The “Class Period” is defined as the period from April 22, 2018, through the earliest

1 of 90 days after the date of mediation or the date of preliminary approval of the settlement. The
2 Settlement provides for a gross settlement amount of \$325,000.00, a share of which is to be distributed
3 to the Class Members based on the pro rata number of weeks worked by the Class Members during the
4 Class Period as a proportion of all weeks worked by all Class Members. In exchange for their share of
5 the settlement amount, all participating Class Members will be deemed to have released Defendant
6 from liability on the terms described in this notice.

7 On [the earliest of 90 days after the date of mediation or the date of preliminary approval of the
8 settlement], the Court preliminarily approved the Settlement and conditionally certified the settlement
9 class. This notice is being sent to you because Defendant's records indicate that you worked for
10 Defendant during the Class Period and that you meet the definition required to be treated as a Class
11 Member.

12 **2. IF YOU ARE STILL EMPLOYED BY DEFENDANT, THIS SETTLEMENT WILL**
13 **NOT AFFECT YOUR EMPLOYMENT.**

14 California law strictly prohibits retaliation. Further, Defendant is prohibited by law from taking
15 any adverse action against or otherwise target, retaliate, or discriminate against any Class Member
16 because of the Class Member's participation or decision not to participate in the Settlement.

17 **3. TERMS OF THE SETTLEMENT**

18 Defendant has agreed to pay \$325,000.00 (the "Gross Settlement Amount") to resolve the
19 claims in the Action. The Parties agreed to the following payments from the Gross Settlement Amount:

- 20 1. **Settlement Administration Costs.** The Court has approved ILYM Group, Inc. to act
21 as the "Settlement Administrator," who is sending this notice to you and will perform
22 many other duties relating to the Settlement. Under the Settlement, up to \$15,000.00
23 will be paid from the Gross Settlement Amount to pay the Settlement Administration
24 Costs.
- 25 2. **Attorneys' Fees and Expenses.** Class Counsel have been prosecuting the Action on
26 behalf of the Class Members on a contingency fee basis (that is, without being paid any
27 money to date) and have been paying all litigation costs and expenses. To date, the
28 Parties have aggressively litigated many aspects of the case including investigation,

1 settlement efforts, and a full-day mediation session. The Court will determine the actual
2 amount awarded to Class Counsel as attorneys' fees, which will be paid from the Gross
3 Settlement Amount. Class Members are not personally responsible for any of Class
4 Counsel's attorneys' fees or expenses. Class Counsel will ask for fees of one-third of
5 the Gross Settlement Amount (i.e., \$108,333.33) as reasonable compensation for the
6 work Class Counsel performed and will continue to perform in the Action. Class
7 Counsel also will ask for reimbursement of up to \$20,000.00 for the costs Class Counsel
8 incurred in connection with the Action.

9 3. **Service Payment to Class Representative.** Class Counsel will ask the Court to provide
10 a service payment to Plaintiff in the amount of \$7,500.00 for Justina Balderrama to
11 compensate her for her efforts on behalf of the Class Members in the Action, including
12 assisting in the investigation and consulting with Class Counsel and providing crucial
13 documents to Class Counsel. Plaintiff also may receive a share of the Settlement as a
14 Class Member.

15 4. **PAGA Payment.** The Parties have agreed on a reasonable sum to be paid in settlement
16 of the PAGA claims included in the Action, which is \$20,000.00. The PAGA Payment
17 is to be approved by the Court pursuant to Labor Code section 2699 and is to be
18 distributed as follows: seventy-five percent (75%) (i.e., \$15,000.00) to the LWDA and
19 twenty-five percent (25%) (i.e., \$5,000.00) to the individuals who come within the
20 definition of an "aggrieved employee" for the purposes of the Settlement (i.e., all
21 individuals who are or were employed by Defendants as non-exempt employees in
22 California during the PAGA Period). The "PAGA Period" is defined for these purposes
23 to mean the period from April 22, 2021, through the earliest of 90 days after the date of
24 mediation or the date of preliminary approval of the settlement.

25 After deducting the amounts above, the balance of the settlement amount will form the "Net
26 Settlement Amount" for distribution to the Class Members.
27
28

1 **4. DISTRIBUTION OF THE SETTLEMENT TO THE CLASS MEMBERS**

2 Each eligible Class Member who does not request exclusion from the Settlement will be deemed
3 a “Class Participant” and will receive a share from the Net Settlement Amount which will be distributed
4 pro rata based on the proportional number of weeks worked by each Class Member during the Class
5 Period (the “Individual Settlement Amount”). If any Class Member requests exclusion from the
6 Settlement, his or her share will be distributed to the remaining Class Participants.

7 Twenty percent (20%) of each Individual Settlement Amount will constitute payment in the
8 form of wages (and each Class Participant will be issued an IRS Form W-2 for such payment to him
9 or her), and Eighty percent (80%) of each Individual Settlement Amount will constitute penalties and
10 interest (and each Class Participant will be issued an IRS Form 1099 for such payment to him or her).

11 Defendant, or its proxies, shall take all usual and customary deductions from the Individual
12 Settlement Amount payments that are distributed as wages, including, but not limited to, state and
13 federal tax withholding, disability premiums, and unemployment insurance premiums. There will be
14 no deduction taken from the interest or penalty distribution—it will, however, be reported on IRS Form
15 1099 as income. Class Participants are responsible for the proper income tax treatment of their
16 Individual Settlement Amount. The Settlement Administrator, Defendant and its counsel, and Class
17 Counsel cannot provide tax advice. Accordingly, Class Members should consult with their tax advisors
18 concerning the tax consequences and treatment of payments they receive under the Settlement.

19 The workweeks you worked for Defendant during the Class Period will be calculated based on
20 Defendant’s records. If you feel that you were not credited with the correct number of workweeks
21 worked during the Class Period, you may submit evidence to the Settlement Administrator on or before
22 [Response Deadline] with documentation to establish the number of workweeks you claim to have
23 actually worked during the Class Period. **Documentation sent to the Settlement Administrator will**
24 **not be returned or preserved, so do not send originals.** The Parties and the Settlement Administrator
25 will promptly evaluate the evidence submitted and discuss in good faith how many workweeks should
26 be credited. The Settlement Administrator will make the final decision as to how many weeks are
27 credited and report the outcome to the Class Participant. If you are unsatisfied with the decision, you
28 may submit an objection, which is explained below.

1 Settlement checks will be mailed to all Class Participants after the Court grants final approval
2 of the Settlement and judgment is entered.

3 **5. THE RELEASE OF CLAIMS**

4 If the Court approves the Settlement, the Court will enter judgment and the Settlement will bind
5 all Class Participants. The Class Participants will then be barred from bringing any “Released Claims”
6 against the “Released Parties” as those terms are defined below.

7 The “Released Parties” are Defendant and all of Defendant and all of Defendant’s subsidiaries,
8 affiliates, shareholders, members, agents, predecessors, successors, and assigns.

9 The “Released Class Claims” are those claims arising out of or related to the allegations set
10 forth in the operative complaint and/or PAGA notice to the California Labor and Workforce
11 Development Agency that arose during the Class Period and/or PAGA Period, including claims for:
12 **(1)** failure to pay minimum wage for all hours worked in violation of Labor Code sections 1194 and
13 1194.2, and the applicable IWC Wage Order(s); **(2)** failure to pay proper overtime wages in violation
14 of Labor Code sections 510, 1197, and 1198, and the applicable IWC Wage Order(s); **(3)** failure to
15 provide compliant rest periods and pay missed rest break premiums in violation of Labor Code section
16 226.7 and the applicable IWC Wage Order(s); **(4)** failure to provide compliant meal periods and pay
17 missed meal period premiums in violation of Labor Code sections 226.7 and 512, and the applicable
18 IWC Wage Order(s); **(5)** failure to maintain accurate employment records in violation of Labor Code
19 section 1174; **(6)** failure to pay timely wages during employment in violation of Labor Code sections
20 204, 210; **(7)** failure to pay all wages due and owing at separation in violation of Labor Code sections
21 201, 202, and 203; **(8)** failure to provide complete and accurate wage statements in violation of Labor
22 Code sections 226 and 226.3; **(9)** deceptive, fraudulent, or otherwise unlawful business practices based
23 on the foregoing in violation of California’s Unfair Competition Law (Bus. & Prof. Code, §§ 17200–
24 17210); **(10)** statutory penalties based on the foregoing pursuant to PAGA (Lab. Code, §§ 2698-
25 2699.6); and **(11)** all claims for liquidated damages, penalties, interest, fees, costs based on the
26 foregoing. No other claims are released other than those claims specifically plead in the operative
27 complaint in the Action.
28

1 The Settlement does *not* release Defendant or any person, party, or entity from claims, if any,
2 by Class Members for workers compensation, unemployment, or disability benefits of any nature. Nor
3 does it release any claims, actions, or causes of action which may be possessed by Class Members
4 under state or federal discrimination statutes, including, without limitation, the California Fair
5 Employment and Housing Act (Gov. Code, §§ 12900–12996); the Unruh Civil Rights Act (Civ. Code,
6 § 51); the California Constitution; Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000, et seq.);
7 the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.); the Employee Retirement Income
8 Security Act of 1974 (29 U.S.C. § 1001 et seq.); and all of their implementing regulations and
9 interpretive guidelines.

10 Class Members who do not request exclusion from the Settlement will be deemed to have
11 acknowledged and agreed that their claims for wages and penalties in the Action are disputed, and that
12 the Settlement payments constitute payment of all sums allegedly due to them. Class Members will be
13 deemed to have acknowledged and agreed that California Labor Code section 206.5 is not applicable
14 to the Settlement payments. That section provides in pertinent part as follows:

15 “An employer shall not require the execution of a release of a claim or right on account
16 of wages due, or to become due, or made as an advance on wages to be earned, unless
17 payment of those wages has been made.”
18

19 The “PAGA Released Claims” are any and all claims that are pled in the Action under PAGA,
20 or which could have been pursued in the Action under PAGA, based on the factual allegations in the
21 Action alleged in the Complaint, including but not limited to: failure to pay minimum wages for all
22 hours worked, failure to pay overtime wages, failure to provide paid rest breaks and pay missed rest
23 break premiums, failure to provide meal periods and pay missed meal period premiums, failure to pay
24 wages timely during employment, failure to pay timely wages at separation, failure to provide accurate
25 and itemized wage statements, failure to reimburse for business expenses, failure to pay sick leave, and
26 recordkeeping violations, pursuant to Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7,
27 256, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199.
28

1 The PAGA Settlement Class members shall have no right or ability to opt out of the portion of
2 this Settlement Agreement releasing PAGA Released Claims.

3 **6. YOUR OPTIONS**

4 **6.1. DO NOTHING AND RECEIVE YOUR PORTION OF THE SETTLEMENT**

5 If you do nothing, you will be automatically included as a Class Participant in the Settlement
6 and will receive a settlement payment. You do *not* have to take any further action to receive your
7 settlement payment. It is, however, the responsibility of all Class Members to ensure that the Settlement
8 Administrator has your current address on file, or you may not receive important information or a
9 settlement payment. The estimated amount of your settlement payment if you do nothing is included
10 on the attached *Class Action Settlement Share Form*.

11 **6.2. REQUEST EXCLUSION FROM THE CLASS AND THE SETTLEMENT**

12 If you do *not* wish to take part in the class action portion of the Settlement (the “Class
13 Settlement”), you may exclude yourself (i.e., opt out of the Class Settlement) by sending the Settlement
14 Administrator a letter or card postmarked no later than [Response Deadline] that specifically requests
15 exclusion from the Class Settlement in this case. The request for exclusion must include your name,
16 address, telephone number, and signature, and it should state:

17 “I wish to be excluded from the settlement class in the case of *Justina Balderrama v.*
18 *Omni Enterprises, Inc.* I understand that if I ask to be excluded from the settlement
19 class, I will not receive any money from the settlement of this lawsuit and will not be
20 releasing any claims I might have.”

21
22 Send the request for exclusion directly to the Settlement Administrator at the following address
23 **by no later than [Response Deadline]:**

24 ILYM Group, Inc.
25 14751 Plaza Drive, Suite J
26 Tustin, California 92780

27 Any person who submits a timely request for exclusion from the Class Settlement shall, upon
28 receipt, no longer be a Class Member, shall be barred from participating in the Class Settlement, and

1 shall receive no benefits from the class action portion of the Settlement. If you want confirmation of
2 receipt of your request for exclusion, please send it by United States certified mail, return receipt
3 requested, or contact the Settlement Administrator.

4 **Importantly**, Class Members who timely and validly request exclusion from the Class
5 Settlement will *not* be excluded from their share of the PAGA Payment or the PAGA Released Claims.
6 Requesting exclusion from the Class Settlement applies solely to the Class Members' entitlement to the
7 class action portion of the Settlement and Released Class Claims and not their entitlement to the PAGA
8 Payment and release of the PAGA Released Claims. If you request exclusion from the Class Settlement
9 you will still be entitled to your share, if any, of the PAGA Payment and will release the PAGA
10 Released Claims.

11 **6.3. OBJECT TO THE SETTLEMENT**

12 You have the right to object to the terms of the Settlement if you do not request exclusion. If,
13 however, the Court rejects your objection, you will still be bound by the terms of the Settlement. If you
14 wish to object to the Settlement, or any portion of it, you may file with the Settlement Administrator
15 and the Court a written objection stating your name, address, telephone number, dates of employment
16 with Defendant, the case name and number, each specific reason in support of your objection, and any
17 legal support for each objection. Objections in writing must be mailed to the Settlement
18 Administrator—ILYM Group, Inc., 14751 Plaza Drive, Suite J, Tustin, California 92780—by no later
19 than **[Response Deadline]** to be considered. **Objections that do not include all required**
20 **information, or that are not timely submitted, might not be considered by the court.**

21 If you choose to object to the Settlement, you may also appear to speak at the final approval
22 and fairness hearing scheduled for **[Final Approval Hearing Date]**, at **[Final Approval Hearing Time]**
23 in Department **[Court Department]** of the Superior Court of the State of California for the County of
24 Orange, located at **[Court Location]**. You have the right to appear either in person or through your own
25 attorney at this hearing.

26 If you object to the Settlement, you will remain a Class Member, and if the Court approves the
27 Settlement, you will receive payment and be bound by the terms of the Settlement in the same way as
28

Class Members who do not object. Any Class Member who does not object in the manner provided above shall have waived any objection to the Settlement, whether by appeal or otherwise.

The Court may, at the time of the final approval and fairness hearing, have certain social distancing requirements or procedures for attendance at hearings. If you wish to object to the Settlement by speaking at the final approval and fairness hearing, you may contact Class Counsel, whose information is provided below, for more information about the Court's current social distancing procedures. You may also review the Court's website for the most current information.

7. HOW TO UPDATE OR CHANGE YOUR ADDRESS

If you move after receiving this notice or if it was misaddressed, please contact the Settlement Administrator, ILYM Group, Inc., at **(888) 250-6810** or by email at **claims@ilymgroupclassaction.com**, as soon as possible. **This is important to ensure that future notices and/or the Settlement payment reach you.**

8. NOTICE OF FINAL JUDGMENT IF THE SETTLEMENT IS APPROVED

Within seven (7) days after the Court has held a final and fairness approval hearing and entered a final order approving the Settlement, if it chooses to do so, the Settlement Administrator will post a copy of that order and final judgment on its website at the following website address:

[Case-Specific Settlement URL (to be added by Settlement Administrator)]

9. IF THE SETTLEMENT IS NOT APPROVED

If the Settlement is not approved by the Court, or if any of its conditions are not satisfied, the Settlement may be voided, in which case no money will be paid, and the case will return to litigation. If that happens, there is no assurance: **(1)** that the class will be certified by the Court; **(2)** that any decision at trial would be in favor of Class Members; **(3)** that a trial decision, if any, would be as favorable to the Class Members as the Settlement; or **(4)** that any favorable trial decision would be upheld if an appeal was filed.

10. QUESTIONS OR COMMENTS

PLEASE DO NOT CALL OR CONTACT THE COURT. If you have any questions about the settlement, you may contact the Settlement Administrator at: **(888) 250-6810** or by e-mail at

1 **claims@ilymgroupclassaction.com**. You may also contact Class Counsel at the addresses or phone
2 numbers listed below.

3
4 **Lawyers Representing Plaintiff and the Class Members**

5 **MELMED LAW GROUP P.C.**

6 Jonathan Melmed

7 jm@melmedlaw.com

8 Laura Supanich

9 lms@melmedlaw.com

10 Michiko Vartanian

11 mv@melmedlaw.com

12 1801 Century Park East, Suite 850

13 Los Angeles, California 90067

14 Phone: (310) 824-3828

15 Fax: (310) 862-6851

EXHIBIT 2

Class Action Settlement Share Form

CLASS ACTION SETTLEMENT SHARE FORM

Justina Balderrama v. Omni Enterprises, Inc.

Case Number 30-2022-01256174-CU-OE-CXC

Superior Court of the State of California for the County of Orange

The proposed class action settlement agreement (the “Settlement”) described in the accompanying *Notice of Proposed Class Action Settlement* resolves disputed claims against Defendant Omni Enterprises, Inc. (“Defendant”) arising out of its compensation practices during the period from April 22, 2018, through the earliest of 90 days after the date of mediation or the date of preliminary approval of the settlement (the “Class Period”) as applied to all individuals who are or were employed by Defendants as non-exempt employees in California during the Class Period (“Class Members”).

You are receiving this form because you are believed to be a Class Member. **According to Defendant’s records, you worked [REDACTED] workweeks for Defendant during the Class Period. Accordingly, your share of the Settlement is currently estimated to be \$[REDACTED]**, which is an estimate of your allocated portion the Net Settlement Amount, as that term is defined in the accompanying *Notice of Proposed Class Action Settlement*. Your estimated share of the Settlement may increase depending on factors such as, but not limited to, the number of Class Members who effectively exclude themselves from the Settlement.

You do not need to do anything to receive money under the Settlement.

If you believe the information provided above as to the number of your workweeks is incorrect and wish to dispute it, please contact the Settlement Administrator no later than **[Response Deadline]** at:

ILYM Group, Inc.
claims@ilymgrouppclassaction.com
(888) 250-6810
14751 Plaza Drive, Suite J
Tustin, California 92780

If you dispute the information stated above, the information Defendant provided to the Settlement Administrator will control unless you are able to provide documentation that establishes otherwise. Any disputes, along with supporting documentation, must be postmarked no later than **[Response Deadline]**.

Do not send originals; documentation sent to the claims administrator will not be returned or preserved.

Exhibit B

April 22, 2022

Filed via the LWDA's PAGA Claim Notice Online Form

Copies Sent via Certified U.S. Mail to:

Human Resources
Omni Enterprise Inc.
1420 E. Edinger Ave., Ste. 111
Santa Ana, CA 92705

Omni Enterprise Inc.
c/o Dante Perez
1420 E. Edinger Ave., Ste. 111
Santa Ana, CA 92705

**Re: *Justina Balderrama v. Omni Enterprise Inc.*
Notice of Intent to File Suit Pursuant to California Labor Code
Section 2699**

To Whom It May Concern:

This office represents Justina Balderrama ("Plaintiff") and a group of the putative class members in a forthcoming lawsuit against Omni Enterprise Inc. ("Defendant"). The action, entitled *Justina Balderrama v. Omni Enterprise Inc.*, is to be filed in the Superior Court of the State of California for the County of Orange (the "Action"). A copy of the complaint as currently drafted, and as is intended to be filed in the Action, is enclosed as **Exhibit A**. This letter incorporates by reference the facts, law, and allegations of Exhibit A.

This letter serves as notice pursuant to the California Labor Code Private Attorneys General Act of 2004 ("PAGA"), codified at California Labor Code sections 2698 through 2699.6, that we intend to include representative claims in the Action for civil penalties under PAGA on behalf of a group of aggrieved employees. For the purposes of this letter, "Aggrieved Employees" is defined as: *All individuals who are or were employed by Defendant(s) as non-exempt employees in California, from one year prior to the mailing of this notice through the date of trial.*

As set forth in more detail in Exhibit A, Defendant violated its obligations to Plaintiff and the Aggrieved Employees under California law by: failing to pay minimum wages for all hours worked, failing to pay all overtime wages earned, failing to provide lawful rest periods and pay missed rest period premiums, failing to provide lawful meal periods and pay missed meal period premiums, failing to maintain accurate records, failing to provide accurate and complete wage statements, failing to pay all wages in full and on time during employment, and failing to pay all wages due upon termination.

Because of these systemic violations, Defendant violated: Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 256, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, and California Industrial Welfare Commission Wage Orders Wage Order 5-2001, and others that may be applicable. (Cal. Code

Notice of Intent to File PAGA Action

April 22, 2022

Page 2 of 2

of Regs., tit. 8, § 11050.) The enclosed Complaint further details: **(1)** the alleged violations; **(2)** the facts and theories supporting these violations; **(3)** the people and entities, dates, classifications, violations, events, and actions at issue; and **(4)** the illegal practices instituted by Defendant.

Together with this correspondence, the enclosed complaint provides notice that we intend to proceed with a claim for civil penalties in the Action pursuant to PAGA. (See Lab. Code, §§ 2698–2699.6.) We intend to fully prosecute the representative claims alleged in the complaint, including by obtaining civil penalties under PAGA.

Please do not hesitate to contact me if you have any questions.

Sincerely,



JONATHAN MELMED

Enclosure

EXHIBIT A

MELMED LAW GROUP P.C.

Jonathan Melmed (SBN 290218)

jm@melmedlaw.com

Laura Supanich (SBN 314805)

lms@melmedlaw.com

Krikor Kouyoumdjian (SBN 336148)

krikor@melmedlaw.com

1801 Century Park East, Suite 850

Los Angeles, California 90067

Phone: (310) 824-3828

Fax: (310) 862-6851

Attorneys for Plaintiff and the Putative Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

JUSTINA BALDERRAMA, an individual, on
behalf of herself and all others similarly situated,

Plaintiff,

v.

OMNI ENTERPRISE INC., a California
corporation; and DOES 1 TO 50,

Defendants.

Case Number:

CLASS ACTION COMPLAINT FOR:

1. Failure to Pay All Minimum Wages;
2. Failure to Pay All Overtime Wages;
3. Failure to Provide Rest Periods and Pay Missed Rest Period Premiums;
4. Failure to Provide Meal Periods and Pay Missed Meal Period Premiums;
5. Failure to Maintain Accurate Employment Records;
6. Failure to Pay Wages Timely during Employment;
7. Failure to Pay All Wages Earned and Unpaid at Separation;
8. Failure to Furnish Accurate Itemized Wage Statements; and
9. Violations of California's Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210).

Demand for Jury Trial

1 Plaintiff Justina Balderrama (“Plaintiff”), on behalf of herself and all other similarly situated
2 employees within the State of California, complains and alleges of defendants Omni Enterprise Inc.
3 and Does 1 to 50 (collectively, “Defendants”), and each of them, as follows:

4 **I. INTRODUCTION**

5 1. This is a class action complaint brought pursuant to California Code of Civil Procedure
6 section 382.

7 2. The “Class Period” as used herein, is defined as the period from four years prior to the
8 filing of this action and continuing into the present and ongoing. Defendants’ violations of California’s
9 laws as described more fully below have been ongoing throughout the Class Period and are still
10 ongoing.

11 3. Plaintiff brings this class action on behalf of herself and the following class: *All*
12 *individuals who are or were employed by Defendants as non-exempt employees in California during*
13 *the Class Period* (the “Class Members”). (Code Civ. Proc., § 382.)

14 4. Plaintiff brings this action on behalf of herself and the Class Members, as a class action,
15 against Defendants for:

- 16 A. Failure to pay all minimum wages,
- 17 B. Failure to pay all overtime wages,
- 18 C. Failure to provide rest periods and pay missed rest period premiums,
- 19 D. Failure to provide meal periods and pay missed meal period premiums,
- 20 E. Failure to maintain accurate employment records,
- 21 F. Failure to pay wages timely during employment,
- 22 G. Failure to pay all wages earned and unpaid at separation,
- 23 H. Failure to furnish accurate itemized wage statements, and
- 24 I. Violations of California’s Unfair Competition Law (“UCL”) (Bus. & Prof.
25 Code, §§ 17200–17210).

26 5. Plaintiff is informed and believes and thereon alleges that the California Industrial
27 Welfare Commission (“IWC”) Wage Order applicable to the facts of this case is IWC Wage Order 5-
28 2001 (the “Applicable Wage Order”) and possibly others that may be applicable. (Cal. Code of Regs.,

1 tit. 8, § 11050.) Plaintiff reserves the right to amend or modify the definition of “Applicable Wage
2 Order” with greater specificity or add additional IWC Wage Orders if additional applicable wage orders
3 are discovered in litigation.

4 **II. JURISDICTION & VENUE**

5 6. This Court has subject matter jurisdiction over all causes of action asserted herein
6 pursuant to Article VI, section 10, of the California Constitution and Code of Civil Procedure section
7 410.10 because this is a civil action in which the matter in controversy, exclusive of interest, exceeds
8 \$25,000, and because each cause of action asserted arises under the laws of the State of California or
9 is subject to adjudication in the courts of the State of California.

10 7. This Court has personal jurisdiction over Defendants because Defendants have caused
11 injuries in the County of Orange and the State of California through their acts, and by their violation
12 of the California Labor Code and California state common law. Defendants transact millions of dollars
13 of business within the State of California. Defendants own, maintain offices, transact business, have
14 an agent or agents within the County of Orange, and/or otherwise are found within the County of
15 Orange, and Defendants are within the jurisdiction of this Court for purposes of service of process.

16 8. Venue as to Defendants is proper in this judicial district, pursuant to section 395 of the
17 Code of Civil Procedure. Defendants operate within California and do business within Orange County,
18 California. The unlawful acts alleged herein have a direct effect on Plaintiff and all of Defendants’
19 employees identified above within Orange County and surrounding counties where Defendants may
20 remotely operate.

21 9. This matter is not appropriate for removal under the Class Action Fairness Act (28
22 U.S.C. § 1332) as the amount in controversy for Plaintiff’s and the Class Members’ claims, in
23 aggregate, is less than \$5 million. Additionally, all the allegations herein occurred in the State of
24 California. As such, even if the amount in controversy did exceed \$5 million this matter would still
25 not be appropriate for removal under the “local controversy” exception to the Class Action Fairness
26 Act. (28 U.S.C. § 1332, subd. (d)(4)(A).)

27 ///

28 ///

1 **III. THE PARTIES**

2 **A. PLAINTIFF**

3 10. At all relevant times, Plaintiff, who is over the age of 18, was and currently is a citizen
4 of California residing in the State of California. Defendants employed Plaintiff as a non-exempt hourly
5 employee in the County of Orange.

6 11. Plaintiff brings this action on behalf of herself and the following class pursuant to
7 section 382 of the Code of Civil Procedure as follows: *All individuals who are or were employed by*
8 *Defendants as non-exempt employees in California during the Class Period* (the “Class Members”).

9 12. The Class Members, at all times pertinent hereto, are or were employees of Defendants
10 during the relevant statutory period.

11 **B. DEFENDANTS**

12 13. Plaintiff is informed and believes and thereon alleges that Defendants were authorized
13 to and doing business in Orange County and is and/or was the legal employer of Plaintiff and the other
14 Class Members during the applicable statutory periods. Plaintiff and the other Class Members were,
15 and are, subject to Defendants’ policies and/or practices complained of herein and have been deprived
16 of the rights guaranteed to them by: California Labor Code sections 201, 202, 203, 204, 210, 226,
17 226.3, 226.7, 256, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, and others
18 that may be applicable; California Business and Professions Code sections 17200 through 17210
19 (“UCL”); and the Applicable Wage Order (Cal. Code of Regs., tit. 8, § 11050).

20 14. Plaintiff is informed and believes, and based thereon alleges, that during the Class
21 Period, Defendants did (and continue to do) business in the State of California, County of Orange.
22 Defendants operations are headquartered in Orange County.

23 15. Plaintiff does not know the true names or capacities, whether individual, partner, or
24 corporate, of the defendants sued herein as Does 1 to 50, inclusive, and for that reason, said defendants
25 are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this
26 complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and
27 thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were
28 responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff

1 and the other Class Members to be subject to the unlawful employment practices, wrongs, injuries, and
2 damages complained of herein.

3 16. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
4 herein, Defendants were and/or are the employers of Plaintiff and the other Class Members. At all
5 times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged
6 to have been done by the named Defendants. Furthermore, the Defendants, and each of them, were the
7 agents, servants, and employees of each and every one of the other Defendants, as well as the agents
8 of all Defendants, and at all times herein mentioned were acting within the course and scope of said
9 agency and employment. Defendants, and each of them, approved of, condoned, or otherwise ratified
10 every one of the acts or omissions complained of herein.

11 17. At all relevant times, Defendants, and each of them, were members of and engaged in a
12 joint venture, partnership, and common enterprise, and acting within the course and scope of and in
13 pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff is informed,
14 and believes, and thereon alleges, that all Defendants were joint employers for all purposes of Plaintiff
15 and the other Class Members.

16 **IV. COMMON FACTS & ALLEGATIONS**

17 18. Plaintiff and the other Class Members (collectively, the “Class Members”) are, and were
18 at all relevant times, employed by the Defendants within the State of California.

19 19. The Class Members are, and were, at all relevant times, non-exempt employees for the
20 purposes of minimum wages, overtime, rest breaks, meal periods, and the other claims alleged in this
21 complaint.

22 20. Specifically, Plaintiff was employed by Defendants within the statutory Class Period,
23 working as an hourly, non-exempt house cleaner for Defendants.

24 **A. MINIMUM WAGE VIOLATIONS**

25 21. Labor Code section 1197 requires employees to be paid at least the minimum wage fixed
26 by the IWC, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code
27 section 1194 entitles “any employee receiving less than the legal minimum wage . . . to recover in a
28 civil action the unpaid balance of the full amount of this minimum wage.” Likewise, the Applicable

1 Wage Order also obligates employers to pay each employee minimum wages for all hours worked.
2 (Cal. Code of Regs., tit. 8, § 11050.) Labor Code section 1198 makes unlawful the employment of an
3 employee under conditions that the IWC Wage Orders prohibit.

4 22. These minimum wage standards apply to each hour that employees work. Therefore,
5 an employer's failure to pay for any particular time worked by an employee is unlawful, even if
6 averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage
7 above minimum wage. (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.)

8 23. Here, Defendants failed to fully conform their pay practices to the requirements of the
9 law during the relevant statutory periods. The Class Members were not compensated for all hours
10 worked including, but not limited to, all hours they were subject to the control of Defendants and/or
11 suffered or permitted to work under the California Labor Code and the Applicable Wage Order. Among
12 other violations, the Class Members were subject to the control of Defendants while off-the-clock and
13 did not receive minimum wage for each hour worked.

14 24. Labor Code sections 1194, subdivision (a), and 1194.2, subdivision (a), provide that an
15 employer who has failed to pay its employees the legal minimum wage is liable to pay those employees
16 the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages
17 due and interest thereon.

18 25. When employees, such as the Class Members, are not paid for all hours worked under
19 Labor Code section 1194, they are entitled to recover minimum wages for the time which they received
20 no compensation. (See *Sillah v. Command International Security Services* (N.D. Cal. 2015) 154
21 F.Supp.3d 891 [employees suing for failure to pay overtime could recover liquidated damages under
22 Labor Code section 1194.2 if they also showed they were paid less than minimum wage].)

23 26. Labor Code section 1197.1 authorizes employees who are paid less than the minimum
24 wage fixed by an applicable state or local law, or by an order of the IWC, a civil penalty, among other
25 damages, as follows:

- 26 (1) "For any initial violation that is intentionally committed, one hundred
27 dollars (\$100) for each underpaid employee for each pay period for
28 which the employee is underpaid."

1 (2) “For each subsequent violation for the same specific offense, two
2 hundred fifty dollars (\$250) for each underpaid employee for each pay
3 period for which the employee is underpaid regardless of whether the
4 initial violation is intentionally committed.” (Lab. Code, § 1197.1, subd.
5 (a).)

6 27. As set forth above, Defendants failed to fully compensate the Class Members for all
7 minimum wages. Accordingly, the Class Members are entitled to recover liquidated damages for
8 violations of Labor Code section 1197.1.

9 28. Based upon these same factual allegations, the Class Members are likewise entitled to
10 penalties under Labor Code sections 1199.

11 **B. OVERTIME VIOLATIONS**

12 29. Labor Code section 510 requires employers to compensate employees who work more
13 than eight hours in one workday, forty hours in a workweek, and for the first eight hours worked on
14 the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee.
15 (Lab. Code, § 510, subd. (a).) Further, Labor Code section 510 obligates employers to compensate
16 employees at no less than twice the regular rate of pay when an employee works more than twelve
17 hours in a day or more than eight hours on the seventh consecutive day of work. (Lab. Code, § 510,
18 subd. (a).) These rules are also reflected in the Applicable Wage Order.

19 30. In accordance with Labor Code section 1194 and the Applicable Wage Order, the Class
20 Members could not then agree and cannot now agree to work for a lesser wage than the amount
21 provided by Labor Code sections 510 or the Applicable Wage Order.

22 31. Here, Defendants violated their duty to accurately and completely compensate the Class
23 Members for all overtime worked. The Class Members periodically worked hours that entitled them
24 to overtime compensation under the law but were not fully compensated for those hours.

25 32. These actions were and are in clear violation of California’s overtime laws as set forth
26 in Labor Code sections 510, 1194, 1199, and the Applicable Wage Order. (Cal. Code of Regs., tit. 8,
27 § 11050.) As a result of Defendants’ faulty policies and practices, the Class Members were not
28 compensated for all hours worked or paid accurate overtime compensation.

1 **C. MEAL BREAK VIOLATIONS**

2 33. Labor Code section 512 and the Applicable Wage Order require employers to provide
3 employees with a thirty-minute uninterrupted and duty-free meal period within the first five hours of
4 work. (Lab. Code, § 512, subd. (a) [“An employer shall not employ an employee for a work period of
5 more than five hours per day without providing the employee with a meal period of not less than 30
6 minutes”]; Cal. Code of Regs., tit. 8, § 11050 [“No employer shall employ any person for a work
7 period of more than five (5) hours without a meal period of not less than 30 minutes”].)
8 Additionally, an employee who works more than ten hours per day is entitled to receive a second thirty-
9 minute uninterrupted and duty-free meal period. (Lab. Code, § 512, subd. (a) [“An employer shall not
10 employ an employee for a work period of more than 10 hours per day without providing the employee
11 with a second meal period of not less than 30 minutes”].)

12 34. “An on-duty meal period is permitted only when the nature of the work prevents an
13 employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal
14 break.” (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 932.) The written agreement must
15 include a provision allowing the employee to revoke it at any time. (*Ibid.*) Generally, the California
16 Department of Industrial Relations, Division of Labor Standards Enforcement (“DLSE”) and courts
17 have “found that the nature of the work exception applies: (1) where the work has some particular
18 external force that requires the employee to be on duty at all times, and (2) where the employee is the
19 sole employee of a particular employer.” (*Id.* at p. 945, internal quotation marks omitted; *Abdullah v.*
20 *U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952, 958–959.) “[I]t is the employer’s obligation
21 to determine whether the nature of the work prevents an employee from being relieved before requiring
22 an employee to take an on-duty meal period.” (*Lubin v. The Wackenhut Corp.*, *supra*, 5 Cal.App.5th
23 at p. 946.)

24 35. Here, the Class Members were never asked to sign any enforceable document agreeing
25 to an on-duty meal period. Moreover, nothing in the nature of their work involved the kind of “external
26 force” that might justify on-duty meal breaks. (*Lubin v. The Wackenhut Corp.*, *supra*, 5 Cal.App.5th
27 at p. 945.) Nevertheless, Defendants periodically did not provide compliant off-duty meal periods
28 within the first five hours of work for the Class Members.

1 36. As with rest breaks, meal breaks must be duty-free. (*Brinker Restaurant Corp. v.*
2 *Superior Court* (2012) 53 Cal.4th 1004, 1035 [“The IWC’s wage orders have long made a meal period’s
3 duty-free nature its defining characteristic.”].) Relinquishing control over employees during meal
4 periods requires that employees be “free to leave the employer’s premises” and be “permitted to attend
5 to personal business.” (*Augustus v. ABM Security Services, Inc.*, *supra*, 2 Cal.5th at p. 275.) Under
6 Labor Code section 512, if an employer maintains a uniform policy that does not authorize and permit
7 the amount of meal time called for under the law (as specified in the Labor Code and/or applicable
8 IWC Wage Order), “it has violated the wage order and is liable.” (*Brinker Restaurant Corp. v. Superior*
9 *Court*, *supra*, 53 Cal.4th at p. 1033.)

10 37. During the applicable statutory periods here, the Class Members were periodically
11 denied legally-compliant and timely off-duty meal periods of at least thirty minutes due to Defendants’
12 unlawful meal period policy and practices. As a result of Defendants’ uniform meal period policies
13 and practices, the Class Members were often not permitted to take compliant first meal periods before
14 the end of the fifth hour of work. The Class Members were also periodically not permitted to take
15 second meal periods for shifts in excess of ten hours. Defendants thus violated Labor Code section
16 512 and the Applicable Wage Order by failing to advise, authorize, or permit the Class Members to
17 receive thirty-minute, off-duty meal periods within the first five hours of their shifts.

18 38. Labor Code section 226.7 provides that “[a]n employer shall not require an employee
19 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
20 applicable regulation, standard, or order of the Industrial Welfare Commission.” (Lab. Code, § 226.7,
21 subd. (b).) Labor Code section 226.7, subdivision (c), and the Applicable Wage Order further obligate
22 employers to pay employees one additional hour of pay at the employee’s regular rate of compensation
23 for each workday that the meal period is not provided. (Lab. Code, § 226.7, subd. (c); Cal. Code of
24 Regs., tit. 8, § 11050 [“If an employer fails to provide an employee a meal period in accordance with
25 the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the
26 employee’s regular rate of compensation for each workday that the meal period is not provided.”].)

27 39. Accordingly, for each day that the Class Members did not receive compliant meal
28 periods, they were and are entitled to receive meal period premiums pursuant to Labor Code section

1 226.7 and the Applicable Wage Order. Defendants, however, failed to pay the Class Members
2 applicable meal period premiums for many workdays that the employees did not receive a compliant
3 meal period. Thus, Defendants have violated Labor Code section 226.7 and the Applicable Wage
4 Order.

5 40. Based on the foregoing, Plaintiff seeks to recover, on behalf of herself and other non-
6 exempt employees, meal period premiums and penalties.

7 **D. UNTIMELY WAGES DURING EMPLOYMENT**

8 41. Labor Code section 204 expressly requires employers who pay employees on a weekly,
9 biweekly, or semimonthly basis to pay all wages “not more than seven calendar days following the
10 close of the payroll period.” Labor Code section 210, subdivision (a), makes employers who violate
11 Labor Code section 204 subject to a penalty of:

12 “(1) For any initial violation, one hundred dollars (\$100) for each failure to
13 pay each employee.

14 “(2) For each subsequent violation, or any willful or intentional violation, two
15 hundred dollars (\$200) for each failure to pay each employee, plus 25
16 percent of the amount unlawfully withheld.” (Lab. Code, § 210, subd.
17 (a).)

18 42. Notably, the penalty provided by Labor Code section 210 is “[i]n addition to, and
19 entirely independent and apart from, any other penalty provided in this article” (Lab. Code, § 210,
20 subd. (a).)

21 43. Due to Defendants’ failure to pay the Class Members the wages described above, along
22 with rest and meal break premiums, Defendants failed to timely pay the Class Members within seven
23 calendar days following the close of payroll in accordance with Labor Code section 204 on a regular
24 and consistent basis. (See *Parson v. Golden State FC, LLC* (N.D. Cal., May 2, 2016, No. 16-CV-
25 00405-JST) 2016 WL 1734010, at p. *3–5, 2016 U.S. Dist. LEXIS 58299 [finding that a failure to pay
26 rest period premiums can support claims under Labor Code sections 203 and 204].)

27 ///

28 ///

1 **E. UNTIMELY WAGES AT SEPARATION**

2 44. Labor Code section 203 provides “if an employer willfully fails to pay . . . any wages
3 of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty”
4 for up to thirty days. (Lab. Code § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.) As a result
5 of Defendants’ failure to pay the Class Members for the wages described above, along with rest and
6 meal break premiums, Defendants violated and continue to violate Labor Code section 203.

7 45. Due to Defendants’ faulty pay policies, those Class Members whose employment with
8 Defendants concluded were not compensated for each and every hour worked at the appropriate rate.
9 Defendants have failed to pay formerly-employed Class Members whose sums were certain at the time
10 of termination within at least seventy-two hours of their resignation and have failed to pay those sums
11 for thirty days thereafter.

12 **F. WAGE STATEMENT VIOLATIONS**

13 46. Defendants also failed to provide accurate itemized wage statements in accordance with
14 Labor Code sections 226, subdivisions (a)(1), (2), (5), and (9). Labor Code section 226, subdivision
15 (a), obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage
16 statement in writing showing:

- 17 (1) The gross wages earned;
18 (2) The total hours worked by the employee;
19 (3) The number of piece-rate units earned and any applicable piece rate if
20 the employee is paid on a piece rate basis;
21 (4) All deductions, provided that all deductions made on written orders of
22 the employee may be aggregated and shown as one item;
23 (5) The net wages earned;
24 (6) The inclusive dates of the period for which the employee is paid;
25 (7) The name of the employee and only the last four digits of his or her social
26 security number or an employee identification number other than a social
27 security number;
28 (8) The name and address of the legal entity that is the employer; and

(9) All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

47. Due to Defendants' failure to pay the Class Members properly as described above, the wage statements issued do not indicate the correct amount of gross wages earned, total hours worked, or the net wages earned, or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Thus, Defendants have violated Labor Code section 226, subdivisions (a)(1), (2), (5), and (9).

48. In addition to Labor Code section 226, subdivision (a), Defendants also knowingly and intentionally failed to provide the Class Members with accurate itemized wage statements in violation of Labor Code section 226, subdivision (e). Defendants knew that they were not providing the Class Members with wage statements required by California law but nevertheless failed to correct their unlawful practices and policies. (See *Garnett v. ADT LLC* (E.D. Cal. 2015) 139 F.Supp.3d 1121, 1134 [finding the defendant knowingly and intentionally violated Labor Code section 226 because the "[d]efendant knew that it was not providing total hours worked to plaintiff or other employees paid on commission" even though it believed that employees paid solely on commission or commission and salary "are exempt and therefore we do not record hours on a wage statement."].)

G. RECORDKEEPING VIOLATIONS

49. Labor Code section 226, subdivision (a), requires employers to keep an accurate record of, among other things, all hours worked by employees. Labor Code section 226.3 provides, in pertinent part, as follows:

"Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law." (Lab. Code,

1 § 226.3, emphasis added.)

2 50. Likewise, Labor Code section 1174, subdivision (d), requires every employer, including
3 Defendants, to:

4 “Keep, at a central location in the state or at the plants or establishments at which
5 employees are employed, payroll records showing the hours worked daily by
6 and the wages paid to, and the number of piece-rate units earned by and any
7 applicable piece rate paid to, employees employed at the respective plants or
8 establishments. These records shall be kept in accordance with rules established
9 for this purpose by the commission, but in any case shall be kept on file for not
10 less than three years. An employer shall not prohibit an employee from
11 maintaining a personal record of hours worked, or, if paid on a piece-rate basis,
12 piece-rate units earned.” (Lab. Code, § 1174, subd. (d), emphasis added.)

13 51. As explained in detail above, Defendants failed to provide the Class Members with
14 accurate itemized wage statements. Defendants did so, in part, because they failed to accurately track
15 hours worked by the Class Members. Defendants have thus failed to keep accurate records of the “total
16 hours worked by the employee[s]” in violation of Labor Code section 226, subdivision (a), and are
17 therefore subject to the penalties provided by Labor Code section 226.3. These penalties are “in
18 addition to any other penalty provided by law.” (Lab. Code, § 226.3.)

19 52. The failure to accurately track hours worked also resulted in a failure of Defendants to
20 keep a record of all “payroll records showing the hours worked daily by” Defendants’ employees,
21 including Plaintiff and the other Class Members, in violation of Labor Code section 1174, subdivision
22 (d).

23 **V. CLASS ACTION ALLEGATIONS**

24 53. As mentioned above, Plaintiff brings this action on behalf of herself and the Class
25 Members pursuant to section 382 of the Code of Civil Procedure.

26 54. **Numerosity/Ascertainability:** The Class Members are so numerous that joinder of all
27 members would be unfeasible and not practicable. The membership of the class is unknown to Plaintiff
28 at this time; however, it is estimated that the number of Class Members is greater than 100 individuals.

1 The identity of such membership is readily ascertainable via inspection of Defendants' employment
2 records.

3 **55. Common Questions of Law and Fact Predominate/Well Defined Community of**
4 **Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated
5 non-exempt employees, which predominate over questions affecting only individual members
6 including, without limitation to:

7 A. Whether Defendants' pay policies/practices resulted in a failure to pay the Class
8 Members for all hours worked, including all minimum wages;

9 B. Whether Defendants' pay policies/practices resulted in a failure to pay the Class
10 Members for all required overtime wages at the Class Members' regular rate of pay;

11 C. Whether Defendants' rest period policies and practices afforded legally
12 compliant rest periods or compensation in lieu thereof;

13 D. Whether Defendants' meal period policies and practices afforded legally
14 compliant meal periods or compensation in lieu thereof;

15 E. Whether Defendants maintained accurate employment records;

16 F. Whether Defendants timely paid all wages during employment;

17 G. Whether Defendants timely paid all wages earned and unpaid at separation;

18 H. Whether Defendants furnished legally-compliant wage statements to the Class
19 Members pursuant to Labor Code section 226; and

20 I. Whether Defendants' violations of the Labor Code and the Applicable Wage
21 Order amounted to a violation of California's UCL.

22 **56. Predominance of Common Questions:** Common questions of law and fact
23 predominate over questions that affect only individual Class Members. The common questions of law
24 set forth above are numerous and substantial and stem from Defendants' uniform policies and practices
25 applicable to each individual class member, such as Defendants' uniform policy and practice of failing
26 to pay for all hours worked, Defendants' uniform policies and practices which failed to provide
27 compliant rest periods, Defendants' uniform policies and practices which failed to provide compliant
28 meal periods, Defendants' failure to provide accurate itemized wage statements, and others. As such,

1 the common questions predominate over individual questions concerning each individual class
2 member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

3 **57. Typicality:** The claims of Plaintiff are typical of the claims of the Class Members
4 because Plaintiff was employed by Defendants as a non-exempt employee in California during the
5 statute(s) of limitation applicable to each cause of action pleaded in this complaint. As alleged herein,
6 Plaintiff, like the other Class Members, was deprived of minimum, regular, and overtime wages
7 because of Defendants' unlawful timekeeping policies and practices, was deprived of rest periods and
8 premium wages in lieu thereof, was deprived of meal periods and premium wages in lieu thereof, was
9 subject to Defendants' uniform rest period policies and practices, was subject to Defendants' uniform
10 meal period policies and practices, was not provided accurate itemized wage statements, was not paid
11 all wages in full and on time, and was subject to other similar policies and practices to which the Class
12 Members were subject.

13 **58. Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
14 represent fairly and adequately the interests of the Class Members. Moreover, Plaintiff's attorneys are
15 ready, willing, and able to fully and adequately represent the Class Members and Plaintiff. Plaintiff's
16 attorneys have prosecuted numerous wage-and-hour class actions in state and federal court in the past
17 and are committed to vigorously prosecuting this action on behalf of the Class Members.

18 **59. Superiority:** The California Labor Code is broadly remedial in nature and serves an
19 important public interest in establishing minimum working conditions and standards in California.
20 These laws and labor standards protect the average working employee from exploitation by employers
21 who have the responsibility to follow the laws and who may seek to take advantage of superior
22 economic and bargaining power in setting onerous terms and conditions of employment. The nature
23 of this action and the format of laws available to Plaintiff and the Class Members make the class action
24 format a particularly efficient and appropriate procedure to redress the violations alleged herein. If
25 each employee were required to file an individual lawsuit, Defendants would necessarily gain an
26 unconscionable advantage since they would be able to exploit and overwhelm the limited resources of
27 each individual plaintiff with their vastly superior financial and legal resources.

28 ///

60. Moreover, requiring each Class Member to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual Class Members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual Class Members against Defendants herein, and which would establish potentially incompatible standards of conduct for Defendants or legal determinations with respect to individual Class Members which would, as a practical matter, be dispositive of the interest of the other Class Members not parties to adjudications or which would substantially impair or impede the ability of the Class Members to protect their interests.

61. Further, the claims of the individual Class Members are not sufficiently large to warrant vigorous individual prosecution considering the concomitant costs and expenses attending thereto. As such, the Class Members identified above are maintainable as a class under section 382 of the Code of Civil Procedure.

VI. CAUSES OF ACTION

First Cause of Action

Failure to Pay All Minimum Wages

(Against All Defendants)

62. Plaintiff realleges and incorporates by reference all previous paragraphs.

63. Section 4 of the Applicable Wage Order and Labor Code section 1197 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. (Lab. Code, § 1197; Cal. Code of Regs., tit. 8, § 11050.) Labor Code sections 1194, subdivision (a), and 1194.2, subdivision (a), provide that an employee who has not been paid the legal minimum wage as required by Labor Code section 1197 may recover the unpaid balance, together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon.

64. Here, Defendants failed to fully conform their pay practices to the requirements of the law during the relevant statutory periods. Plaintiff and the other Class Members were not compensated

1 for all hours worked including, but not limited to, all hours they were subject to the control of
2 Defendants and/or suffered or permitted to work under the Labor Code and the Applicable Wage Order.

3 65. Labor Code section 1198 makes unlawful the employment of an employee under
4 conditions that the IWC Wage Orders prohibit. Labor Code sections 1194, subdivision (a), and 1194.2,
5 subdivision (a), provide that an employer who has failed to pay its employees the legal minimum wage
6 is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages
7 in an amount equal to the wages due and interest thereon.

8 66. As a direct and proximate result of Defendants' unlawful conduct as alleged herein,
9 Plaintiff and the other Class Members have sustained economic damages, including but not limited to
10 unpaid wages and lost interest, in an amount to be established at trial, and they are entitled to recover
11 economic and statutory damages and penalties and other appropriate relief because of Defendants'
12 violations of the Labor Code and Applicable Wage Order.

13 67. Defendants' practices and policies regarding illegal employee compensation are
14 unlawful and create an entitlement to recovery by Plaintiff and the other Class Members in a civil
15 action for the unpaid amount of minimum wages, liquidated damages, including interest thereon,
16 statutory penalties, attorney's fees, and costs of suit according to Labor Code sections 204, 218.5,
17 1194, 1194.2, 1197, and 1198, and Code of Civil Procedure section 1021.5.

18 **Second Cause of Action**

19 *Failure to Pay All Overtime Wages*

20 *(Against All Defendants)*

21 68. Plaintiff realleges and incorporates by reference all previous paragraphs.

22 69. This cause of action is brought pursuant to Labor Code sections 204, 510, 1194, and
23 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours
24 worked and provide a private right of action for the failure to pay all overtime compensation for
25 overtime work performed. At all times relevant herein, Defendants were required to properly pay
26 Plaintiff and the other Class Members for all overtime wages earned pursuant to Labor Code section
27 1194 and the Applicable Wage Order. Defendants caused Plaintiff and the other Class Members to
28 work overtime hours but did not compensate them at one and one-half times their regular rate of pay

1 for such hours in accordance with California law. Likewise, Defendants caused Plaintiff and the other
2 Class Members to work double-time hours but did not compensate them at twice their regular rate of
3 pay for such hours in accordance with California law.

4 70. Defendants failed to fully conform their pay practices to the requirements of California
5 law. This unlawful conduct includes but is not limited to Defendants' uniform and unlawful pay
6 policies and practices of failing to accurately record all the time that non-exempt employees were under
7 the supervision and control of Defendants. The foregoing policies and practices are unlawful and allow
8 Plaintiff and the other Class Members to recover in a civil action the unpaid amount of overtime
9 premiums owing, including interest thereon, statutory penalties, attorney's fees, and costs of suit
10 according to Labor Code section 204, 510, 1194, and 1198, the Applicable Wage Order, and Code of
11 Civil Procedure section 1021.5.

12 **Third Cause of Action**

13 *Failure to Provide Rest Periods and Pay Missed Rest Period Premiums*

14 *(Against All Defendants)*

15 71. Plaintiff realleges and incorporates by reference all previous paragraphs.

16 72. Section 12 of the Applicable Wage Order, and Labor Code section 226.7 establish the
17 right of employees to be provided with a rest period of at least ten minutes for each four hour period
18 worked, or major fraction thereof. (See Cal. Code of Regs., tit. 8, § 11050.)

19 73. Due to Defendants' unlawful rest period policies and practices described in detail above,
20 Defendants did not authorize and permit Plaintiff and the other Class Members to take all rest periods
21 to which they were legally entitled. Despite Defendants' violations, Defendants have not paid an
22 additional hour of pay to Plaintiff and the other Class Members at their respective regular rates of pay
23 for each violation, in accordance with California Labor Code section 226.7.

24 74. The foregoing violations create an entitlement to recovery by Plaintiff and the other
25 Class Members in a civil action for the unpaid amount of rest period premiums owing, including interest
26 thereon, statutory penalties, and costs of suit pursuant to the Applicable Wage Order, and California
27 Labor Code section 226.7.

28 ///

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2

3

4

5
6
7
8
9
0
1

2
3
4
5

6

7

8

9

- 0
- 1
- 2
- 3
- 4

5
6

7
8

1 Plaintiff and the other Class Members have been denied their legal right and protected interest in having
2 available at a central location at the plant or establishment where they are employed, accurate and
3 complete payroll records showing the hours worked daily by, and the wages paid to, employees at those
4 respective locations pursuant to Labor Code 1174.

5 **Sixth Cause of Action**

6 *Failure to Pay Wages Timely during Employment*

7 *(Against All Defendants)*

8 82. Plaintiff realleges and incorporates by reference all previous paragraphs.

9 83. Labor Code section 200 provides that “wages” include all amounts for labor performed
10 by employees of every description, whether the amount is fixed or ascertained by the standard of time,
11 task, pieces, commission basis, or other method of calculation. Labor Code section 204 states that all
12 wages earned by any person in any employment are payable twice during the calendar month and must
13 be paid not more than seven days following the close of the period when the wages were earned. Labor
14 Code section 210, subdivision (a), makes employers who violate Labor Code section 204 subject to a
15 penalty of \$100 for any initial failure to timely pay each employee’s full wages and \$200 for each
16 subsequent violation, plus 25% of the amount unlawfully withheld.

17 84. Labor Code section 216 establishes that it is a misdemeanor for any person, with regards
18 to wages due, to “falsely deny the amount or validity thereof, or that the same is due, with intent to
19 secure himself, his employer or other person, any discount upon such indebtedness, or with intent to
20 annoy, harass, oppress, hinder, delay, or defraud, the person to whom such indebtedness is due.”

21 85. Defendants as a matter of established company policy and procedure in the State of
22 California, scheduled, required, suffered, and/or permitted Plaintiff and the other Class Members, to
23 work without full compensation, to work without legally-compliant off-duty meal periods, to work
24 without legally-compliant off-duty rest periods, and thereby failed to fully pay Plaintiff and the other
25 Class Members within seven days of the close of payroll, as required by law.

26 86. Defendants, as a matter of established company policy and procedure in the State of
27 California, falsely deny they owe Plaintiff and the other Class Members these wages, with the intent of
28 securing for itself a discount upon its indebtedness and/or to annoy, harass, oppress, hinder, delay,

1 and/or defraud Plaintiff and the other Class Members.

2 87. Defendants' pattern, practice, and uniform administration of its corporate policy of
3 illegally denying employees compensation, as described herein, is unlawful and entitles Plaintiff and
4 the other Class Members to recover, pursuant to Labor Code section 218, the unpaid balance of the
5 compensation owed to them in a civil action and any applicable penalties, attorney fees, and interest
6 owed to them pursuant to Labor Code sections 210 and 218.5.

7 **Seventh Cause of Action**

8 *Failure to Pay All Wages Earned and Unpaid at Separation*

9 *(Against All Defendants)*

10 88. Plaintiff realleges and incorporates by reference all previous paragraphs.

11 89. The actionable period for this cause of action is three years prior to the filing of this
12 complaint through the present, and ongoing until the violations are corrected or the class is certified.
13 (*Pineda v. Bank of America, N.A.* (2010) 50 Cal.4th 1389, 1395; *Murphy v. Kenneth Cole Productions,*
14 *Inc.* (2007) 40 Cal.4th 1094, 1109; Code Civ. Proc., § 338, subd. (a).) Labor Code sections 201 and
15 202 of the California Labor Code require Defendants to pay all compensation due and owing to its
16 former employees (including the formerly-employed Class Members) during the actionable period for
17 this cause of action at or around the time that their employment is or was terminated, or ended.

18 90. Section 203 of the Labor Code provides that if an employer willfully fails to pay
19 compensation promptly upon discharge or resignation, as required by Sections 201 and 202, then the
20 employer is liable for penalties in the form of continued compensation up to thirty workdays.

21 91. Due to Defendants' faulty pay policies, those Class Members whose employment with
22 Defendants has concluded were not compensated for each and every hour worked at the appropriate
23 rate. Defendants have willfully failed to pay those formerly-employed Class Members whose sums
24 were certain at the time of termination within seventy-two hours of their resignation and have failed to
25 pay those sums for thirty days thereafter as required by Labor Code sections 201 through 203.

26 92. As a result, Defendants are liable to the formerly-employed Class Members for waiting
27 time penalties amounting to thirty days wages for the formerly-employed Class Members pursuant to
28 Labor Code section 203. (See, e.g., DLSE Manual, § 4.3.4 [failure to pay any sort of wages due upon

1 termination entitles an employee to recover waiting time penalties].)

2 **Eighth Cause of Action**

3 *Failure to Furnish Accurate Itemized Wage Statements*

4 *(Against All Defendants)*

5 93. Plaintiff realleges and incorporates by reference all previous paragraphs.

6 94. Labor Code section 226, subdivision (a), obligates employers, semi-monthly or at the
7 time of each payment to furnish an itemized wage statement in writing showing:

- 8 (1) The gross wages earned;
- 9 (2) The total hours worked by the employee;
- 10 (3) The number of piece-rate units earned and any applicable piece rate if
11 the employee is paid on a piece rate basis;
- 12 (4) All deductions, provided that all deductions made on written orders of
13 the employee may be aggregated and shown as one item;
- 14 (5) The net wages earned;
- 15 (6) The inclusive dates of the period for which the employee is paid;
- 16 (7) The name of the employee and only the last four digits of his or her social
17 security number or an employee identification number other than a social
18 security number;
- 19 (8) The name and address of the legal entity that is the employer; and
- 20 (9) All applicable hourly rates in effect during the pay period and the
21 corresponding number of hours worked at each hourly rate by the
22 employee.

23 95. As set forth above, Defendants issued and continues to issue wage statements to its non-
24 exempt employees including Plaintiff and the other Class Members that are inadequate under Labor
25 Code section 226, subdivision (a). By failing to pay Plaintiff and the other Class Members properly as
26 described above, Defendants failed to include required information on their wage statements, including,
27 but not limited to, the gross wages earned, the net wages earned in violation of Labor Code section
28 226, subdivision (a).

96. Defendants' failure to comply with Labor Code section 226, subdivision (a), of the Labor Code was knowing and intentional. (Lab. Code, § 226, subd. (e)).

97. As a result of Defendants' issuance of inaccurate itemized wage statements to Plaintiff and the other Class Members in violation of Labor Code section 226, subdivision (a), Plaintiff and the other Class Members are each entitled to recover an initial penalty of \$50, and subsequent penalties of \$100, up to an amount not exceeding an aggregate penalty of \$4,000 per Plaintiff and per each Class Member from Defendants pursuant to Labor Code section 226, subdivision (e), along with costs and reasonable attorneys' fees.

Ninth Cause of Action

Violations of California's Unfair Competition Law

(Against All Defendants)

98. Plaintiff realleges and incorporates by reference all previous paragraphs.

99. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code section 17200 through 17210, by committing the unlawful acts described above. Defendants' utilization of these unfair and unlawful business practices deprived and continue to deprive Plaintiff and the other Class Members of compensation to which they are legally entitled. These practices constitute unfair and unlawful competition and provide an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

100. Because Plaintiff is a victim of Defendants' unfair and unlawful conduct alleged herein, Plaintiff for herself and on behalf of the Class Members, seeks full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendants pursuant to Business and Professions Code sections 17203 and 17208.

101. The acts complained of herein occurred within the four years prior to the initiation of this action and are continuing into the present and ongoing.

102. Plaintiff was compelled to retain the services of counsel to file this Court action to protect her interests and those of the Class Members, to obtain restitution and injunctive relief on behalf

1 of Defendants' current non-exempt employees and to enforce important rights affecting the public
2 interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which Plaintiff
3 is entitled to recover under Code of Civil Procedure section 1021.5.

4 **VII. DEMAND FOR JURY TRIAL**

5 103. Plaintiff hereby demands trial by jury of Plaintiff's and the Class Members' claims
6 against Defendants.

7 **VIII. PRAYER FOR RELIEF**

8 Plaintiff prays for judgment for herself and for all others on whose behalf this suit is brought
9 against Defendants, as follows:

- 10 1. For an order certifying the proposed class;
- 11 2. For an order appointing Plaintiff as representative of the class;
- 12 3. For an order appointing Plaintiff's counsel as counsel for the class;
- 13 4. For the failure to pay all minimum wages, compensatory, consequential, general, and
14 special damages according to proof pursuant to Labor Code sections 1194, 1194.2,
15 1197, and others as may be applicable;
- 16 5. For the failure to pay all overtime wages, compensatory, consequential, general, and
17 special damages according to proof pursuant to Labor Code sections 204, 510, 1194,
18 1198, and others as may be applicable;
- 19 6. For the failure to provide rest periods and pay missed rest period premiums,
20 compensatory, consequential, general, and special damages according to proof pursuant
21 to Labor Code section 226.7;
- 22 7. For the failure to provide meal periods and pay missed meal period premiums,
23 compensatory, consequential, general, and special damages according to proof pursuant
24 to Labor Code sections 226.7 and 512;
- 25 8. For the failure to maintain accurate employment records, penalties pursuant to Labor
26 Code sections 226.3, 1174.5, and others that may be applicable;
- 27 9. For the failure to pay wages timely during employment, the unpaid balance of the
28 compensation owed to Plaintiff and the other Class Members and any applicable

penalties owed to them pursuant to Labor Code section 210;

10. For the failure to pay all wages earned and unpaid at separation, statutory waiting time penalties pursuant to Labor Code sections 201 through 203, for the Class Members who quit or were fired in an amount equal to their daily wage multiplied by thirty days, as may be proven;
11. For the violations of California's Unfair Competition Law, restitution to Plaintiff and the other Class Members of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code sections 17200 through 17210;
12. Prejudgment interest on all due and unpaid wages pursuant to Labor Code section 218.6 and Civil Code sections 3287 and 3289;
13. On all causes of action for which attorneys' fees may be available, for attorneys' fees and costs as provided by Labor Code sections 218.5, 226, Code of Civil Procedure section 1021.5, and others as may be applicable;
14. For an order enjoining Defendants, and each of them, and their agents, servants, and employees, and all persons acting under, in concert with, or for them, from acting in derogation of any rights or duties adumbrated in this complaint; and
15. For such other and further relief, this Court may deem just and proper.

Dated: April 22, 2022

MELMED LAW GROUP P.C.



JONATHAN MELMED

Attorney for Plaintiff and the Putative Class

Exhibit C

Exhibit C – List of Class and PAGA Approvals

- *Blan v. Button Transportation, Inc.* (Super. Ct. Solano County, No. FCS045949) [final approval granted on December 8, 2016; Hon. Michael Mattice];
- *Cleary v. Penske Truck Leasing Co., L.P.* (Super. Ct. San Bernardino County, No. CIVDS1600144) [final approval granted on February 8, 2017; Hon. Janet M. Frangie];
- *Plimpton v. Gordon Trucking, Inc.* (Super. Ct. San Bernardino County, No. CIVDS1511918) [final approval granted on February 16, 2017; Hon. Donald Alvarez];
- *Broner v. Michael Dusi Trucking, Inc.* (Super. Ct. San Luis Obispo County, No. 16CVP-0044) [final approval granted on March 15, 2017; Hon. Donald G. Umhofer];
- *Riley v. Pacific Tank Lines, Inc.* (Super. Ct. San Bernardino County, No. CIVDS1603263) [final approval granted on March 28, 2017; Hon. John M. Pacheco];
- *Davis v. Western Merchandise Express, Inc.* (Super. Ct. Kern County, No. BCV-16-101216) [final approval granted on April 26, 2017; Hon. Sidney P. Chapin];
- *Long v. Covenant Transport, Inc.* (E.D.Tenn., No. 1:15-cv-278) [final approval granted on April 28, 2017; Hon. Travis R. McDonough];
- *Pena v. Inner Valley Transport, Inc.* (Super. Ct. Kern County, No. BCV-100625-LHB) [final approval granted on May 5, 2017; Hon. Thomas S. Clark];
- *Upton v. Coremark International, Inc.* (Super. Ct. San Francisco County, No. CGC 15-549348) [final approval granted on May 10, 2017; Hon. Curtis E.A. Karnow];
- *Ramirez v. Castlewood West, LLC* (Super. Ct. Monterey County, No. 16CV01137) [final approval granted on May 18, 2017; Hon. Lydia Villarreal];
- *William Haynes v. Reliable Trucking, Inc.* (Super. Ct. Contra Costa County, No. C16-01237) [final approval granted on May 26, 2017; Hon. Barry P. Goode];
- *Davis v. Transforce, Inc.* (Super. Ct. Kern County, No. BCV-16-101393) [final approval granted on June 5, 2017; Hon. Thomas S. Clark];
- *Harris v. Jerry DeBriar Logging Co., Inc.* (Super. Ct. Cowlitz County, No. 16-2-00402-5) [final approval granted on June 7, 2017; Hon. Stephen M. Warning];

- 1 • *Powers v. Estenson Logistics, LLC* (Super. Ct. San Bernardino County, No. CIVDS1602295) [final approval granted on July 12, 2017; Hon. David Cohn];
- 2
- 3 • *Hugues v. The Morning Star Trucking Company, LLC* (Super. Ct. Yolo County, No. CV16-1215) [final approval granted on August 3, 2017; Hon. W. Arvid Johnson];
- 4
- 5 • *Waddell v. Dalton Trucking, Inc.* (Super. Ct. San Bernardino County, No. CIVDS1603262) [final approval granted on August 7, 2017; Hon. John M. Pacheco];
- 6
- 7 • *Campos v. Black Eagle Trucking, Inc.* (Super. Ct. San Diego County, No. 37-2016-00023781-CU-OE-CTL) [final approval granted on August 25, 2017; Hon. Timothy Taylor];
- 8
- 9
- 10 • *Asplund v. White Timber Industries, Inc.* (Super. Ct. Cowlitz County, Wash., No. 16-2-00870-5) [final approval granted on September 13, 2017; Hon. Michael Evans];
- 11
- 12 • *Elson v. Covey Auto Express, Inc.* (Super. Ct. San Joaquin County, No. STK-CV-UOE-2016-0009114) [final approval granted on September 18, 2017; Hon. Linda L. Lofthus];
- 13
- 14 • *Torres v. Salinas Farm Labor Contractor, Inc.* (Super. Ct. Stanislaus County, No. 2018173) [final approval granted on December 19, 2017; Hon. Roger M. Beauchesne];
- 15
- 16 • *Young v. First Class Service Trucking, Inc.* (Super. Ct. San Joaquin County, No. STK-CV-UOE-2016-10381) [final approval granted January 2, 2018; Hon. Elizabeth Humphreys];
- 17
- 18
- 19 • *Isabella v. Equinox Holdings, Inc.* (Super. Ct. L.A. County, No. BC578960) [final approval granted on January 4, 2018; Hon. Ann I. Jones];
- 20
- 21 • *Grumm v. T.J.S. Leasing & Holding, Co., Inc.* (Super. Ct. Humboldt County, No. DR160492) [final approval granted on February 6, 2018; Hon. Kelly L. Neel];
- 22
- 23 • *Robins v. Versa Logistics, LLC* (Super. Ct. L.A. County, No. BC644321) [final approval granted on March 26, 2018; Hon. Carolyn B. Kuhl];
- 24
- 25 • *Chavez v. Shamrock Foods Company* (C.D.Cal., No. 5:17-cv-00731-SVW-AFM) [final approval granted on April 11, 2018; Hon. Stephen V. Wilson];
- 26
- 27 • *Diaz v. Absolute West, LLC* (Super. Ct. L.A. County, No. BC647126) [final approval granted on April 19, 2018; Hon. Maren E. Nelson];
- 28

- *Herman v. Andrus Transportation Services, Inc.* (C.D.Cal., No. 5:16-CV-02365-AG-DTB) [final approval granted on May 14, 2018; Hon. Andrew J. Guilford];
- *Hernandez v. J.V.C. Truck Lines, Inc.* (Super. Ct. San Bernardino County, No. CIVDS1714857) [final approval granted on May 22, 2018; Hon. Brian S. McCarville];
- *Happell v. Hercules Forwarding, Inc.* (Super. Ct. L.A. County, No. BC639636) [final approval granted on June 14, 2018; Hon. Carolyn B. Kuhl];
- *Medina v. Timmerman Starlite Trucking, Inc.* (Super. Ct. Stanislaus County, No. 2023292) [final approval granted on June 15, 2018; Hon. Roger M. Beauchesne];
- *Brown v. Saks & Company, LLC* (C.D.Cal., No. 2:17-cv-04210-SJO) [final approval granted on July 16, 2018; Hon. S. James Otero];
- *Flores v. Aqua Terra Culinary, Inc.* (Super. Ct. Monterey County, No. 17CV002672) [final approval granted on July 18, 2018; Hon. Lydia Villarreal];
- *Myers v. LBC Limited Partnership* (Super. Ct. San Bernardino County, No. CIVDS1715068) [final approval granted on July 25, 2018; Hon. Janet M. Frangie];
- *Westphal v. New York Life Insurance Company* (Super. Ct. Placer County, No. SCV0040562) [final approval granted on August 30, 2018; Hon. Michael W. Jones];
- *Hollis v. Union Pacific Railroad Company* (C.D.Cal., No. 5:17-cv-02449-JGB) [final approval granted on September 17, 2018; Hon. Jesus G. Bernal];
- *Cheifer v. WHGM, Inc.* (Super. Ct. L.A. County, No. LC104900) [final approval granted on September 21, 2018; Hon. Rupert A. Byrdsong];
- *Hernandez-Chulo v. E&R Trucking, Inc.* (Super. Ct. Merced County, No. 18CV-00882) [final approval granted on October 29, 2018; Hon. Brian McCabe];
- *Freeman v. Redwood Wise Riders, Inc.* (Super. Ct. Solano County, No. FCS050140) [approval granted on December 4, 2018; Hon. Wendy G. Getty];
- *Ricci v. HSS, Inc.* (Super. Ct. Yuba County, No. CVCV17-00967) [final approval granted on December 4, 2018; Hon. Stephen W. Berrier];
- *Antonov v. GL HHR, Inc.* (Super. Ct. San Bernardino County, No. CIVDS1724725) [final approval granted on December 11, 2018; Hon. David Cohn];

- *Pena v. Keystone Freight Corp.* (Super. Ct. Tulare County, No. VCU269897) [final approval granted on January 14, 2019; Hon. Melinda M. Reed];
- *Westbrook v. Winco Holdings, Inc.* (Super. Ct. Riverside County, No. RIC171068) [final approval granted on January 17, 2019; Hon. Raquel A. Marquez];
- *Jackie Thompson v. Cheema Freightlines, LLC* (Super. Ct. San Joaquin County, No. STK-CV-UOE-2017-01011658) [final approval granted on February 6, 2019; Hon. Roger Ross];
- *Pazo v. Incredible Adventures* (Super. Ct. San Francisco County, No. CGC-16-555971) [final approval granted on February 25, 2019; Hon. Anne-Christine Massullo];
- *Reboucas v. Trans International Trucking, Inc.* (Super. Ct. L.A. County, No. BC644182) [final approval granted on May 9, 2019; Hon. Maren E. Nelson];
- *Myers v. Jerome's Furniture Warehouse* (Super. Ct. San Bernardino County, No. CIVDS1710569) [final approval granted on June 11, 2019; Hon. Janet M. Frangie];
- *Juarez v. Magic Laundry Services, Inc.* (Super. Ct. L.A. County, No. BC713767) [approval granted on June 14, 2019; Hon. William F. Highberger];
- *Rangel v. Guard-Systems, Inc.* (Super. Ct. L.A. County, No. 19STCV19613) [approval granted on June 18, 2019; Hon. Yolanda Orozco];
- *Castaing v. East Bay Automotive Company* (Super. Ct. Alameda County, No. RG17879115) [final approval granted on June 24, 2019; Hon. Brad Seligman];
- *Juarez v. Mike Lowrie Trucking, Inc.* (Super. Ct. Kern County, No. BCV-18-100177TSC) [final approval granted on August 8, 2019; Hon. Thomas S. Clark];
- *Pia v. 5G's Automotive, Inc.* (Super. Ct. Tulare County, No. VCU274628) [final approval granted on September 6, 2019; Hon. Brett D. Hillman];
- *Thomas v. Commercial Protective Services, Inc.* (Super. Ct. San Bernardino County, No. CIVDS1821925) [final approval granted on September 16, 2019; Hon. David Cohn];
- *Berbano v. Ingram Micro, Inc.* (Super. Ct. San Bernardino County, No. CIVDS1826085) [final approval granted on September 17, 2019; Hon. David Cohn];

- *Guerra v. U.S. Polymers, Inc.* (Super. Ct. San Bernardino County, No. CIVDS1829174) [approval granted on September 20, 2019; Hon. David Cohn];
- *Lopez-Urrutia v. Southwest V-Ditch Inc.* (Super. Ct. San Bernardino County, No. CIVDS1833332) [final approval granted on October 16, 2019; Hon. David Cohn];
- *Guy v. California Lutheran University* (Super. Ct. Ventura County, No. 56-219-00524415-CU-OE-VTA) [final approval granted on November 6, 2019; Hon. Mark C. Borrell];
- *Moseby v. Renzenberger, Inc.* (Super. Ct. San Bernardino County, No. CIVDS1725125) [final approval granted on November 7, 2019; Hon. Janet M. Frangie];
- *Woodard v. AH 2005 Management, L.P.* (Super. Ct. Monterey County, No. 18CV001986) [approval granted on November 21, 2019; Hon. Lydia M. Villarreal];
- *Ramirez v. William J. Wickwire M.D.* (Super. Ct. San Bernardino County, No. CIVDS1913102) [final approval granted on November 25, 2019; Hon. David Cohn];
- *Lyons v. SAIA Motor Freight Line, LLC* (Super. Ct. San Bernardino County, No. CIVDS1828225) [final approval granted on December 9, 2019; Hon. David Cohn];
- *Baker v. Vallejo CJD, LLC* (Super. Ct. Tulare County, No. VCU273830) [final approval granted on December 16, 2019; Hon. David C. Mathias];
- *Tsao v. Giorgio Armani Corporation* (Super. Ct. Orange County, No. 30-218-01000817-CU-OE-CXC) [final approval granted on December 20, 2019; Hon. Peter J. Wilson];
- *Burnham v. DGDGI* (Super. Ct. Santa Clara County, No. 2018-1-CV-331434) [final approval granted on January 17, 2020; Hon. Thomas E. Kuhnle];
- *Martinez v. E&A Protective Services-Bravo, LLC* (E.D. Cal., No. 1:18-cv-00658-BAM) [final approval granted on January 17, 2020; Hon. Barbara A. McAuliffe];
- *Cardoso v. Rogers & Rogers, Inc.* (Super. Ct. Imperial County, No. ECU000637) [final approval granted on January 27, 2020; Hon. Brooks Anderholt];
- *Mora v. The Complete Logistics Company* (Super. Ct. San Bernardino County, No. CIVDS1833922) [final approval granted on February 10, 2020; Hon. David Cohn];

- 1 • *Lopez v. Ruiz Food Products, Inc.* (Super. Ct. Tulare County, No. VCU 275105) [final
2 approval granted on March 10, 2020; Hon. Bret D. Hillman];
- 3 • *Jaurigue v. Knights of Columbus* (Super. Ct. San Bernardino County, No.
4 CIVDS1824508) [final approval granted on July 10, 2020; Hon. David Cohn];
- 5 • *Lopez v. Unitek College NCP, LLC* (Super. Ct. Kern County, No. BCV-19-102146)
6 [final approval granted on July 15, 2020; Hon. Stephen D. Schuett];
- 7 • *Ashe v. Farmers Insurance Group* (Super. Ct. L.A. County, No. 18STCV00453) [final
8 approval granted on July 20, 2020; Hon. Steven J. Kleinfield];
- 9 • *Martin v. Break the Floor Productions LLC* (Super. Ct. San Diego County, No. 37-
10 2019-00029711-CU-OE-CTL) [final approval granted on October 23, 2020; Hon.
11 Kenneth J. Medel];
- 12 • *Robles v. Winsford II Corporation* (Super. Ct. San Bernardino County, No.
13 CIVDS1902903) [final approval granted on November 3, 2020; Hon. David Cohn];
- 14 • *Lopez v. RTS Holdings, LLC* (Super. Ct. San Bernardino County, No. CIVDS1934904)
15 [final approval granted on November 24, 2020; Hon. David Cohn];
- 16 • *Romero v. Carl Zeiss Meditec Production* (Super. Ct. San Bernardino County, No.
17 CIVDS1907556) [final approval on December 3, 2020; Hon. David Cohn];
- 18 • *Soto v. Britz Farming Corp* (Super. Ct. Merced County, No. 19CV04182) [final
19 approval granted on December 8, 2020; Hon. Brian L. McCabe];
- 20 • *Martinez v. Global Sales & Warehousing, LLC* (Super. Ct. Ventura County, No. 56-
21 2019-00534178-CU-OE-VTA) [final approval granted on December 18, 2020; Hon.
22 Matthew P. Guasco];
- 23 • *Gaxiola v. Lloyds Manufacturing Services, Inc.* (Super. Ct. San Bernardino County, No.
24 CIVDS1939269) [final approval granted on February 2, 2021; Hon. David Cohn];
- 25 • *Ancona v. Populus Financial Group, Inc.* (Super. Ct. L.A. County, No. 19STCV41065)
26 [approval granted on February 18, 2021; Hon. Maurice A. Leiter];
- 27 • *Elayda v. Physassist Scribes, Inc.* (Super. Ct. San Bernardino County, No.
28 CIVDS2002023) [final approval granted on March 1, 2021; Hon. David Cohn];

- *Lee v. Home Delivery Logistics, Inc.* (Super. Ct. Alameda County, No. RG18927149) [final approval granted on March 2, 2021; Hon. Winifred Y. Smith];
- *Pagh v. Wyndham Vacation Ownership, Inc.* (C.D.Cal., No. 8:19-cv-00812-JWH-ADSx) [final approval granted on March 23, 2021; Hon. John W. Holcomb];
- *Robinson v. Paragon Systems, Inc.* (Super. Ct. Sacramento County, No. BC720142) [final approval granted on April 1, 2021; Hon. Elihu Berle];
- *Lachman v. Berlitz Languages, Inc.* (Super. Ct. L.A. County, No. 19STCV01533) [final approval granted on April 1, 2021; Hon. Carolyn Kohl];
- *Murray v. Scelzi Enterprises, Inc.* (Super. Ct. Riverside County, No. RIC2002545) [final approval granted on April 13, 2021; Hon. Sunshine Sykes];
- *Ruiz v. SAIA Motor Freight Line, LLC* (Super. Ct. San Bernardino County, No. CIVDS2014796) [final approval granted on May 19, 2021; Hon. David Cohn];
- *Gallegos v. TST, Inc.* (Super. Ct. San Bernardino County, No. CIVDS1933834) [final approval granted on May 20, 2021; Hon. David Cohn];
- *Cornejo v. Weidner Property Management LLC* (Super. Ct. San Bernardino County, No. CIVDS2016465) [final approval granted on May 25, 2021; Hon. David Cohn];
- *Garcia v. Construction Innovations Group, LLC* (Super. Ct. Sacramento County, No. 34-2020-00285239) [final granted on May 25, 2021; Hon. Shama H. Mesiwala];
- *Aguirre v. Swinerton Builders* (Super. Ct. San Bernardino County, No. CIVDS 1925363) [final approval granted on May 26, 2021; Hon. David Cohn];
- *Pease v. Wattrans, Inc.* (Super. Ct. San Bernardino County, No. CIVDS1919832) [final approval granted on June 3, 2021; Hon. Thomas Garza];
- *Moreira v. University of Redlands* (Super. Ct. San Bernardino County, No. CIVDS1913813) [final approval granted on June 8, 2021; Hon. David Cohn];
- *Garcia v. Cardenas Markets, LLC* (Super. Ct. San Bernardino County, No. CIVDS1917380) [final granted on July 1, 2021; Hon. David Cohn];
- *Robinzine v. Mohawk ESV, Inc.* (Super. Ct. San Bernardino County, No. CIVDS1930033) [final approval granted on July 7, 2021; Hon. David Cohn];

- *Cuevas v. Action Embroidery Corp.* (Super. Ct. San Bernardino County, No. CIVDS2012230) [final approval granted on July 29, 2021; Hon. David Cohn];
- *Urquizo v. Santos Montemayor FLC, Inc.* (Super. Ct. Kern County, No. BCV-20-101587) [final granted on July 30, 2021; Hon. Thomas S. Clark];
- *San Juan v. San Marcos Growers* (Super. Ct. Ventura County, No. 56-2020-00542257-CU-OE-VTA) [final approval granted on August 13, 2021; Hon. Matthew P. Guasco];
- *Cartagena v. Impact Healthcare* (Super. Ct. Tulare County, No. VCU283955) [approval granted on August 30, 2021; Hon. David C. Mathias];
- *Reveles v. Certis U.S.A. L.L.C.* (Super. Ct. Kern County, No. BCV-20-102315) [final approval granted on October 4, 2021; Hon. Bernard C. Barmann Jr.];
- *Rico v. Western Mesquite Mines, Inc.* (Super. Ct. Imperial County, No. ECU000873) [final approval granted on October 14, 2021; Hon. Jeffrey B. Jones];
- *Correa v. Newell Brands, Inc.* (Super. Ct. San Bernardino County, No. CIVDS1901381) [final approval granted on October 29, 2021; Hon. David Cohn];
- *Gonzalez v. Frank Carson Landscape & Maintenance, Inc.* (Super. Ct. Sacramento County, No. 34-2020-00289370) [final approval granted on November 4, 2021; Hon. Christopher E. Krueger];
- *Nelson v. Hardwoods Specialty Products US LP* (Super. Ct. Alameda County, No. RG19046262) [final approval granted on November 18, 2021; Hon. Evelio Grillo];
- *Lopez v. KLX Inc.* (Super. Ct. Tulare County, No. VCU275330) [final approval granted on November 30, 2021; Hon. Bret Hillman];
- *Golightly v. AMDA, Inc.* (Super. Ct. L.A. County, No. 20STCV13173) [final approval granted on December 1, 2021; Hon. Amy D. Hogue];
- *Bollinger-Felt v. Pacific Bells, LLC* (Super. Ct. Stanislaus County, No. CV-20-000680) [final approval granted on January 27, 2022; Hon. Stacy P. Speiller];
- *Mahdian v. AG Laguna Hills, LLC* (Super. Ct. Orange County, No. 30-2019-01098085-CU-OE-CJC) [approval granted on February 4, 2022; Hon. Randall J. Sherman];

- *Martinez v. East Coast/West Coast Logistics, LLC* (Super. Ct. San Bernardino County, No. CIVDS1932745) [final approval granted on March 2, 2022; Hon. David Cohn];
- *Aguilera v. Salmex Pizza, Inc.* (Super. Ct. San Bernardino County, No. CIVDS2014336) [approval granted on March 10, 2022; Hon. David Cohn];
- *Sotelo v. Cosmetix West* (Super. Ct. L.A. County, No. 19STCV28580) [final approval granted on March 23, 2022; Hon. Kenneth R. Freeman];
- *Dulay v. Center for Social Dynamics* (Super. Ct. Alameda County, No. RG20055934) [final approval granted on April 7, 2022; Hon. Frank Roesch];
- *Pena v. Canyon Plastics, Inc.* (Super. Ct. L.A. County, No. 20STCV34161) [final approval granted on April 13, 2022; Hon. Amy D. Hogue];
- *Guerrero v. Advanced Vision Science, Inc.* (Super. Ct. Santa Barbara County, No. 18CV05341) [final approval granted on May 9, 2022; Hon. Donna Geck];
- *Velasco v. Jasmine Vineyards, Inc.* (Super. Ct. Kern County, No. BCV-19-101405) [final approval granted on May 18, 2022; Hon. Bernard C. Barmann, Jr.];
- *Sampson v. Diversified Conveyors International, LLC* (Super. Ct. San Bernardino County, No. CIVDS2018610) [final approval granted on June 3, 2022; Hon. Rafael A. Arreola];
- *Martinez v. Victorian Care Homes of the Monterey Peninsula, Inc.* (Super. Ct. Monterey County, No. 20CV002456) [final approval granted on June 29, 2022; Hon. Thomas W. Wills];
- *Lujano v. General Production Service of California, Inc.* (Super. Ct. Kern County, No. BCV-20-102705) [final approval granted on July 6, 2022; Hon. Bernard C. Barmann Jr.];
- *Matus v. Flory Industries* (Super. Ct. Stanislaus County, No. CV-20-003117) [final approval granted on August 11, 2022; Hon. John D. Freeland];
- *Ramos v. Cambridge College* (Super. Ct. San Bernardino County, No. CIVSB2112109) [final approval granted on August 15, 2022; Hon. David Cohn];

- *Garcia v. The Golden 1 Credit Union* (Super. Ct. Sacramento County, No. 34-2021-00293831) [final approval granted on August 26, 2022; Hon. Lauri A. Damrell];
- *Casillas v. California Paper Products LLC* (Super. Ct. Kern County, No. BCV-20-102523) [approval granted on September 8, 2022; Hon. David Lampe];
- *Arzola v. All Star Glass Inc.* (Super. Ct. Ventura County, No. 56-2021-00553193-CU-OE-VTA) [final approval granted on September 9, 2022; Hon. Matthew P. Guasco];
- *Beltran v. Hutchinson Aerospace & Industry, Inc.* (Super. Ct. Los Angeles County, No. 20STCV02267) [approval granted on September 9, 2022; Hon. John J. Kralik];
- *Avina v. Ravco Construction, Inc.* (Super. Ct. Orange County, No. 30-2020-01146748-CU-OE-CXC) [final approval granted on September 16, 2022; Hon. Randall J. Sherman];
- *Garcia v. Pure Heart Congregate Living Facility, Inc.* (Super. Ct. Los Angeles County, No. 21STCV05070) [approval granted on September 21, 2022; Hon. Carolyn B. Kuhl];
- *Andrisani v. Dracko Merchandising Inc.* (Super. Ct. Los Angeles County, No. 20STCV42108) [final approval granted on October 5, 2022; Hon. Carolyn B. Kuhl];
- *Torres v. McKesson Medical-Surgical, Inc.* (Super. Ct. San Bernardino, No. CIVDS1917976) [final approval granted on November 2, 2022; Hon. David Cohn];
- *Gonzalez v. Lief Organics, LLC*, (Super. Ct. L.A. County, No. 20STCV19371) [final granted on December 9, 2022; Hon. David S. Cunningham III];
- *Hernandez v. Avon Protection Systems, Inc.* (Super. Ct. Orange County, No. 30-2021-01183162-CU-OE-CXC) [final approval granted on January 13, 2023; Hon. Randall J. Sherman];
- *Escalante v. Hudson Technologies Company* (Super. Ct. San Diego County, No. 37-2019-00070131-CU-OE-CTL) [final approval granted on January 20, 2023; Hon. Gregory Pollack];
- *Garcia v. Pacific Diagnostics Laboratories, LLC* (Super. Ct. Santa Barbara County, No. 19CV00992) [preliminary approval granted on January 20, 2023; final approval set to be heard on May 3, 2023; Hon. Thomas P. Anderle];

- *Lopez v. Praesidium Diagnostics LLC* (Super. Ct. Los Angeles County, No. 21STCv08378) [final approval granted on February 17, 2023; Hon. Lawrence P. Riff];
- *Aguilar v. Jimenez Nursery, Inc.* (Super. Ct. Santa Barbara, No. 21CV01836) [final approval granted on March 9, 2023; Hon. Colleen K. Sterne];
- *Duarte v. Sage Veterinary Centers, LP* (Super. Ct. Santa Clara, No. 20CV375152) [; final granted on March 14, 2023; Hon. Sunil R. Kulkarni];
- *Santacruz v. Golden Labor Services, LLC* (Super. Ct. Kern County, No. BCV-20-102729) [preliminary approval granted on July 19, 2022; final approval set to be heard on May 9, 2023; Hon. J. Eric Bradshaw];
- *Medina-Rivera v. Treebeard Landscape, Inc.* (Super. Ct. San Diego County, No. 37-2021-00050044-CU-OE-CTL) [preliminary approval granted on March 17, 2023; final approval set to be heard on June 2, 2023; Hon. Joel R. Wohlfeil];
- *Bray v. Uline, Inc.,* (Super. Ct. San Bernardino County, No. CIVSB2112058) [preliminary approval granted on March 20, 2023; final approval set to be heard on August 8, 2023; Hon. David Cohn];
- *Barrera v. Spencer Aerospace Manufacturing, LLC* (Super. Ct. Los Angeles County, No. 21STCV05109) [preliminary approval granted on March 22, 2023; final approval set to be heard on June 21, 2023; Hon. Lawrence P. Riff];
- *Guzman v. Destination Anywhere, Inc.,* (Super. Ct. San Joaquin County, No. STK-CV-UOE-2021-10462) [final approval granted on April 14, 2023; Hon. Barbara Kronlund];
- *Benson, et al. v. F21 OPCO, LLC dba Forever 21,* (Super. Ct. San Diego, No. 37-2021-00024619-CU-OE-CTL) [preliminary approval granted on April 21, 2023; final approval set to be heard on October 6, 2023; Hon, Eddie C. Sturgeon];
- *Orozco v. Ventura Hospitality Partners LLC* (Super. Ct. Ventura County, No. 56-2021-00557454-CU-OE-VTA) [preliminary approval granted on April 25, 2023; final approval set to be heard on October 5, 2023; Hon. Mathew Guasco];
- *Janssen, et al. v. Mussetter Distributing, Inc.* (Super. Ct. Pacer County, No. S-CV-0049920 [final approval granted on May 4, 2023; Hon. Michael W. Jones];

- *Brohawn v. Automobile Accessories Company* (Super. Ct. Shasta County, No. CVCV21-0198019) [final approval granted on May 8, 2023; Hon. Stephen H. Baker].

Exhibit D

Case Name: Justina Balderrama v. Omni Enterprises, Inc.
Tuesday, November 5, 2024

Requesting Attorneys Name:	Laura Supanich
E-Mail:	lms@melmedlaw.com
ILYM Contact:	Lisa Mullins
E-Mail:	Lisa@ilymgroup.com
Contact Number:	714.878.8836

Estimate For Administrative Solutions

KEY ASSUMPTIONS	
Total Number of Class Members	287
Estimated Percentage of Remails	15%
Certified Spanish Translation	Yes
Case Duration (Years)	1

Summary Estimate: ILYM Group Fees & Expenses

Case Startup:	\$325.00
Project Management:	\$2,190.00
Notification & Mailing:	\$827.75
Distribution (Includes EIN, Bank Acct * /QSF Setup):	\$2,912.25
Case Conclusion:	\$695.00

Estimated ILYM Fees & Expenses: \$6,950.00

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Case Name: Justina Balderrama v. Omni Enterprises, Inc.

Tuesday, November 5, 2024

Requesting Attorneys Name: Laura Supanich

Activity	Rate Type	Unit Cost	Volume	Amount
CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	1	\$150.00
Programming of Class Database	Hourly	\$175.00	1	\$175.00

**ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.*

Subtotal \$325.00

PROJECT MANAGEMENT				
Project Manager (Case notification and maintenance)	Hourly	\$120.00	3	\$360.00
Staff Hours for Processing Returned Mail	Hourly	\$70.00	2	\$140.00
Staff Hours for Processing Opt-Outs, Disputes & Objection(s)	Hourly	\$70.00	2	\$140.00
Report Processing	Hourly	\$70.00	2	\$140.00
Certified Spanish Translation	Flat Fee	\$1,250.00	1	\$1,250.00
NCOA	Flat Rate	\$75.00	1	\$75.00
Toll Free Customer Service Representative	Flat Fee	\$85.00	1	\$85.00
Weekly Reports	Flat Rate	\$750.00	1	Waived

Subtotal \$2,190.00

NOTIFICATION/MAILING				
Fulfillment of Notice, English & Spanish	Per Piece	\$1.50	287	\$430.50
USPS First Class Postage	Per Piece	\$0.70	287	\$200.90
Re-Mails (Forward/Skip trace Undeliverables)	Per Piece	\$2.00	43	\$86.10
Storage, Photocopies, Deliveries	Flat Fee	\$110.25	1	\$110.25

Subtotal \$827.75

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Case Name: Justina Balderrama v. Omni Enterprises, Inc.

Tuesday, November 5, 2024

Requesting Attorneys Name: Laura Supanich

Activity	Rate Type	Unit Cost	Volume	Amount
DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)				
Distribution Setup & Management	Hourly	\$150.00	2	\$300.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	2	\$250.00
Check, Stub & Release - Print & Mail (W2/1099)	Per Check	\$1.00	287	\$287.00
USPS First Class Postage	Per Piece	\$0.60	287	\$172.20
Re-Mails (Forward/Skip trace Undeliverables up to 10%)	Per Piece	\$1.50	29	\$43.05
Preparation of Taxes	Hourly	\$120.00	3	\$360.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00

**Additional Bank fees may apply*

Subtotal \$2,912.25

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	1	\$100.00
Project Manager Final Reporting	Hourly	\$120.00	1	\$120.00
Process Unclaimed Funds to Cy Pres	Flat Fee	\$350.00	1	\$350.00
Declaration	Hourly	\$125.00	1	\$125.00

Subtotal \$695.00

Estimated ILYM Fees & Expenses: \$6,950.00

Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

Exhibit E

Subject: Thank you for your Proposed Settlement Submission

Date: Tuesday, November 5, 2024 at 4:08:33 PM Pacific Standard Time

From: DIR PAGA Unit

To: rachel@melmedlaw.com

11/05/2024 04:08:19 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

Exhibit F

REQUEST FOR EXCLUSION FORM
(Balderrama v. Omni Enterprise, Inc., Case No. 30-2022-01256174-CU-OE-CXC)

IF YOU WANT TO BE INCLUDED IN THIS CLASS ACTION SETTLEMENT AND RECEIVE A SETTLEMENT PAYMENT, DO NOT FILL OUT THIS FORM.

IF YOU DO NOT WANT TO BE INCLUDED IN THE CLASS SETTLEMENT, AND DO NOT WANT TO RECEIVE A CLASS SETTLEMENT PAYMENT, YOU MUST COMPLETE, DATE AND SIGN THIS FORM AND MAIL OR FAX IT BACK TO THE ADDRESS BELOW, POSTMARKED NO LATER THAN [response deadline]:

Balderrama v. Omni Enterprise, Inc.
c/o Settlement Administrator
ILYM Group, Inc.
2832 Walnut Ave., Suite C
Tustin, CA 92780

If you submit this Request for Exclusion Form, you will not receive an individual settlement payment, and you will not be bound by the Class Release set forth in the Settlement Agreement, if the Court grants final approval to the class action settlement. You will be excluded from the Class Settlement, and will not be a Class Member in this case. You **should not** submit a Request for Exclusion and an Objection. If you do, then the Request for Exclusion will govern and the Objection will be deemed invalid.

If you are a PAGA Settlement Class member, you will receive your portion of the PAGA Payment even if you elect to exclude yourself from the class action settlement. **You will still be bound by the PAGA Release if you request exclusion from the class action settlement.** The PAGA Settlement Class members are those members of the Class who worked for Defendant in the period from April 22, 2021, through (*insert prelim approval date*).

I have received notice of the proposed settlement in this class action lawsuit, and I wish to be excluded from the settlement in the class action lawsuit. I understand by requesting exclusion from the settlement I will not receive any money from the settlement of the lawsuit, but I will retain whatever rights I may have, if any, to pursue a claim against the Defendant with respect to the claims raised in the above-referenced lawsuit.

Your Name: _____

Street Address: _____

City, State, Zip Code: _____

Telephone Number, Including Area Code: _____

Last four digits of Social Security Number: XXX-XX-_____

Date: _____

(signature)